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NOTES OF THE WEEK

The Late Mr. Raglan Somerset, Q.C.

We announce with regret the death at the age of 70 of Mr. Raglan Somerset, Q.C., who attained distinction in the spheres of law and letters.

A member of an old Monmouthshire family which included amongst its members the Army Commander-in-Chief in the Crimea, Lord Raglan Somerset was educated at Bath College and Queens' College, Cambridge, where he was a scholar. Graduating in classics with second class honours he entered the literary field by becoming the editor of *Granta* and afterwards doing a good deal of journalism. In 1911 he was called to the bar by both Gray's Inn and the Middle Temple and continued his writing activities whilst developing his legal practice on the Oxford circuit. He served throughout the First World War on Intelligence duties and his experience in this capacity was turned to good literary account when he was demobilized. In 1918 he made his first and only attempt to enter the political field where he fought an unsuccessful contest as a Liberal in the Erdington Division of Birmingham.

Raglan Somerset was of imposing stature and his outspoken qualities became well-known. Clad in a cloak-like raglan coat he was a familiar figure in the beautiful neighbourhood from which the head of his family took his title.

In 1933 he became Recorder of Oswestry and four years later was transferred to the same office for Gloucester. At the same time he took silk.

In 1950 he also accepted the duties of Deputy Chairman of Quarter Sessions for his native county and his commanding presence on the bench will be greatly missed in Monmouthshire.

Soliciting Prostitution

In the metropolitan police district it is an offence against s. 54 (11) of the Metropolitan Police Act, 1839, for a common prostitute to loiter in a street for the purpose of soliciting, to the annoyance of the inhabitants or passengers. Usually the prosecution is by a police officer who gives evidence, perhaps corroborated by that of another officer, to the effect that he saw passengers obviously annoyed by the acts of solicitation. Rarely is there a witness to prove that he was actually annoyed. This is probably due to the dislike of people to being brought into court in connexion with an unpleasant type of case, but the absence of evidence from members of the general public is often the occasion of criticism by various bodies.

It is no doubt desirable that the public should give co-operation with the police in this matter, and there have been instances recently when this has been forthcoming. It is not only the passer-by who is annoyed by the activities of the prostitute; there may be real and greater annoyance caused to inhabitants in a respectable neighbourhood by the sight of prostitutes plying their trade openly before the eyes of residents, some of whom are perturbed that their children should see what is going on. We read that a certain number of residents have come forward, not shrinking from publicity in what is really a good cause, and have pointed out women to the police. If some of these inhabitants will also go to court and give evidence of what they have seen and how it has caused annoyance to them they will be assisting in checking what has apparently become a serious public scandal.

Solicitation by Men

At a conference of the Association for Moral and Social Hygiene, speakers criticized the existing law on the subject of soliciting, and emphasized the responsibility of men for the prevalence of prostitution. One speaker also referred to the molestation of respectable girls by what were described as kerb-crawlers and motorists who were a nuisance in the west-end.

If women are to be punished for soliciting men and thereby annoying them—and the annoyance is often dubious—certainly men who pester decent women and girls by seeking immoral relations with them are still more deserving of punishment. In London such cases are sometimes dealt with under s. 54 of the Metropolitan Police Act, 1839, as insulting behaviour likely to cause a breach of the peace. What has sometimes been suggested is that where it can be clearly proved that a man has pestered a woman

for such a purpose he might be prosecuted under the Vagrancy Act, 1898, for persistently soliciting or importuning for immoral purposes. This is usually alleged in respect of importuning for homosexual purposes, but the words are not in themselves expressed so narrowly, and it would be interesting if a test case, in which the facts were clear, were brought into court. We do not recollect that any such prosecution has taken place, but if it has we should be interested to hear about it from any correspondent.

An Unusual Case of Aiding and Abetting

Section 35 of the Magistrates' Courts Act, 1952, enacts that a person who aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of a like offence. Relying on this section the police at Dudley recently summoned the passenger in a car for aiding and abetting the driver of the car in the offence of driving the wrong way in a one-way street. The principal offender was summoned, presumably, under s. 49 of the Road Traffic Act, 1930, for failing to conform to the indication given by an authorized traffic sign. As reported the facts were that the driver was a stranger to the town but his passenger was a resident there, having his business on the corner of the street where the offence was committed. The offence occurred during the hours of darkness and the driver said that he did not know the way and did not see any signs but he relied on, and followed, the directions given by his passenger as to the way he should go. The passenger, in a letter, did not dispute these facts. The magistrates fined the driver 20*s*. and the passenger £2.

There can be no doubt that a passenger who undertakes to direct the driver of a car in this way makes himself liable for any directions he gives which result in the driver's failing to conform to traffic signs, but we suspect that many passengers would be surprised to know that in doing so they were rendering themselves liable to conviction and fining. In the case in question we agree, if we may say so, with the court's view of the relative penalties merited by the two offenders.

Drink and the Driver

If there is one thing on which we think everyone would agree it is that the law should be enforced strictly against those who drive, or attempt to drive, when they are not fit to do so because of the alcohol they have consumed. But there is a great deal of argument as to when that stage is reached. The counsel of perfection is "no drink at all when driving." Even this leads to the question: "How soon after I have had one sherry is it safe for me to drive?"

We are prompted to the consideration of this question by a report on tests conducted under the auspices of the Medical Research Council. With the aid of a dummy motor car and a moving panorama of a country road they claim to be able to test the reactions of a driver as if he were driving on the road, and it is said that his speed and every mistake he makes are automatically recorded.

Forty volunteers (35 men and five women) were tested and it was stated that the tests showed that the ability to steer was interfered with by even the amount of alcohol contained in one pint of beer or one small whisky. Control of the accelerator pedal was also said to be affected by only one or two drinks. After some more alcohol a conscious but exaggerated effort to exercise the necessary controls was apparent. The women who were tested reacted differently from the men. Those who were naturally cautious became super-cautious, after a couple of drinks, to an extent which "could make them a nuisance on the road."

These, of course, were tests and the people concerned were aware that they were being tested. To what extent, one wonders, was their performance affected by this fact. There is such a thing as trying too hard which can produce false results in tests and examinations. We say this not to minimize in any way the danger of the drink-affected driver but because we think it is easy to draw unreliable conclusions from any tests, or from observation of performances, which are conducted or which take place in an artificial atmosphere rather than in a completely normal one. The difficulty in this case is to find a method of obtaining reliable information under completely normal conditions.

Shops Legislation

The Shops Act, 1950, was a consolidating measure, but opportunity was not taken to clear up some of the obscurities of the earlier legislation. This was the subject of criticisim in the Divisional Court on the hearing of appeals by a prosecutor, by case stated in *Newberry* v. *Cohen* (*Smoked Salmon*), *Ltd.* and *Newberry* v. *Adelson* (*The Times*, April 27).

In the first, the question arose whether uncooked kippers were within the expression "meals or refreshments," so as to permit them to be sold on Sunday, while the second case referred to the sale of a packet of tea on Sunday.

In delivering judgment, the Lord Chief Justice said that no one really knew until a case was brought before a magistrate and then up to the Court whether or not they could sell one thing or another. Seventeen years ago the Court pointed out in *Hinde* v. *Allmond* that the Act really was unworkable to a very great extent. Since then no attempt had been made to clarify the law, and in 1950, the opportunity of clarifying it had not been taken. It was not fair on shopkeepers, inspectors or magistrates.

Lord Goddard suggested that a test of a meal might be whether or not an article might be consumed equally well in the shop or at home. As to the packet of tea that was not a refreshment until it had been treated in some way.

Cassels, J., in agreeing, said he thought the object of the Act was to provide that on Sundays you could not do the extensive shopping that you could do on a weekday, but if there was a sudden emergency you could send out for a meal.

The Court, holding that kippers came within the meaning of "meals or refreshments," but that a packet of tea did not, dismissed one appeal and allowed the other.

Capital Punishment and the Protection of the Police

It is commonly said, and it is probably true, that the majority of police officers are of opinion that the abolition of capital punishment would result in the more frequent use of firearms by criminals and a consequent increase in murder and crimes of violence generally against the police. The police are entitled to the greatest protection the law can provide, and any argument they put forward on this aspect of the question deserves the most careful consideration.

Whether they are right has been largely a matter of surmise and what is really needed is evidence. Some valuable evidence has actually been obtained, and the *Manchester Guardian* has given suitable prominence to it. In this the Howard League for Penal Reform has been particularly interested.

It appears that in 1954 the then chief constable of Vancouver, who was president of the Chief Constables' Association of Canada, said to a parliamentary committee:

"It would be interesting to know the number of policemen murdered in the execution of their duty in those parts of

the world where capital punishment has been abolished. I submit that it will be found the number is much higher than in those countries where the death penalty is still in effect."

The point was taken up by Professor Thorston Sellin of the University of Pennsylvania, who thought the United States appeared to offer a convenient testing ground, because there are some states which have abolished the death penalty and others which retain it, while the over-all conditions throughout the country are about the same. Accordingly he undertook a statistical examination, the results of which have now been published.

Result of the Inquiry

Professor Sellin came to the conclusion that the argument put forward on behalf of the police view lacks any factual basis. He obtained police reports from 265 American cities. In six American States where capital punishment has been abolished there has been no rise at all in the number of lethal attacks on police-constables. In fact, the statistics reveal that if anything the number of attacks is slightly smaller, reckoning on a *per capita* basis.

The survey took in cities in 11 states where the death penalty is used and six states where it had been abolished by the year 1919 or earlier. In all cases there is a tradition of the police being armed, whether or not the law permits capital punishment. The figures show that in these 265 cities there was a total of 128 murderous attacks or encounters in which 138 policemen were killed.

Professor Sellin compared the figures, computing what he calls the homicide rate by taking the number of police-constables killed per 100,000 of the population according to the 1950 census. He found that in the six abolitionist states the homicide rate in the various cities reporting worked out to 1·2 fatal attacks on policemen per 100,000 of population. In the other 11 states where the death penalty has remained in force the rate was 1·3.

At least it can fairly be deduced from the figures, as Professor Sellin claims, that it is impossible to conclude that the states which have abolished the death penalty have thereby made the policeman's lot more hazardous.

The Effect of Disqualification

We read in a north country newspaper a report of a case in which a driver, who was disqualified after conviction for having been in charge of a car whilst under the influence of drink, is stated to have said that the loss of his licence would cost him his job and his house. No doubt this was, for him, a major tragedy, but it is because disqualification can have such results that it is, or should be, a major weapon in the armoury of the law in its fight to prevent serious road traffic offences. All motorists know that disqualification may follow conviction for various offences, and they ought to know that for certain offences a court is bound to disqualify unless it can properly find special reasons to order otherwise. We think it would be a good thing if publicity could be given to a case such as the one we have referred to in order to make other drivers consider seriously what effect disqualification would have in their cases.

All too many drivers will not face up to the fact that to be in charge of a motor vehicle is to assume responsibilities towards other people calling for a high standard of conduct on the road. Whether it be a question of dangerous or careless driving, driving without proper insurance cover, driving, or being in charge of, a vehicle whilst under the influence of drink or any other of the offences which can have such serious consequences for other road users we venture to think that only a negligible percentage of drivers would commit such offences if they kept always in the forefront of their minds their responsibilities as drivers. Courts can help to induce drivers to do this by using more freely their power to disqualify. We do not think that the fact that in an individual case it is hard on the driver should be allowed unduly to influence the court's decision because the driver should have thought of that possibility before, and not after, he committed his offence.

In Defence of the Post Office

Dishonesty by Post Office servants is always a serious matter, and when a postman is convicted of stealing a postal packet it is naturally and properly reported in the press. We must not be misled into thinking there is wholesale dishonesty in the Post Office, however. The standard of honesty is in fact remarkably high.

Answering a Parliamentary question, the Assistant Postmaster-General supplied some almost astronomical figures, and stated that his interrogator could send a registered letter every week for the next 500 years and lose only one. What may happen in the next 500 years is a matter of surmise, but at all events we can accept the figures as an assurance that if postmen remain as honest as at present that will be the position—and that is good enough for us.

Remission of Sentence

In the case of a prisoner serving a sentence of more than a month, the Prison Commissioners can grant remission of as much as one third of the sentence as the reward of good conduct. This is generally granted, but it is not a right, and should not be regarded as automatic.

The matter was the subject of a decision in the Court of Criminal Appeal on April 23, in the appeals against sentence of Maguire and Enos. At quarter sessions the deputy chairman had passed sentences of seven and five years' imprisonment respectively, stating that in order that the prisoners might be in prison for four years and eight months and three years and four months he must pass sentences of seven and five years, on the basis of a remission of one third for good conduct.

The Court of Criminal Appeal disapproved of this method of calculating a sentence, and the Lord Chief Justice, who delivered the judgment, expressed the hope that it would not be used in future. The correct course was to consider what was the appropriate sentence for the particular offence and to impose it without taking into account possible remission. Lord Goddard referred to an unreported case in which the Court had taken that factor into consideration, but observed that it was quite an exceptional case. In the present cases the Court reduced the sentences to five and three years respectively.

Maintenance Order Against Wife

Mr. J. R. Norton-Amor, the learned clerk to the justices of Gibraltar, writes to us about our note at p. 207, *ante*, and sends us a copy of s. 3 (2) of the Maintenance Ordinance (cap. 69 of the Laws of Gibraltar), which is as follows: "It shall be the duty of every married woman having separate property to provide reasonable maintenance for

(*a*) her husband, and children (legitimate or otherwise) under the age of 15; and

(*b*) her father, mother, and children (legitimate or otherwise) over the age of 15, if any such persons are by reason of old age or physical or mental disability unable to maintain themselves."

Mr. Norton-Amor adds that so far as he is aware this provision, enacted in 1949, has never been invoked.

What is not quite clear is whether a husband can apply for a maintenance order under which his wife must make payments to him or whether the Gibraltar law provides only for orders being obtained at the instance of the authority that is affording some form of public assistance, on the lines of ss. 42 and 43 of the National Assistance Act, 1948. It looks as though the latter is the more probable. It is interesting to note that in Gibraltar a person is still liable to contribute to the maintenance of relations on a wider scale than is now the case in England, and more like the provisions that existed under the Poor Law.

Appeals by "L" Drivers Who Fail Their Tests

We read in the national press a report of a learner driver who seems to have felt very aggrieved because he had twice been failed in his driving test by the same examiner, who, the learner complained, was in a bad-mannered and sarcastic mood and failed to pay attention to some things that happened during the test. He appealed, under s. 6 (6) of the Road Traffic Act, 1934, to his local magistrates' court, but without success. The powers of a magistrates' court under that subsection are very limited. They may order that the applicant be eligible to submit himself to another test before the expiration of the period prescribed by regulations, but *only* if they are satisfied that the test complained of was not properly conducted in accordance with the regulations. The regulations in question are the Motor Vehicles (Driving Licences) Regulations, 1950. Regulation 6 prescribes the nature of the tests and reg. 7 prescribes the persons by whom the tests may be conducted.

It is very difficult to see how a court could ever be in a position satisfactorily to judge whether, in a test properly conducted, the examiner was right or wrong in his decision to fail the learner. Some people do think, however, that where a learner has failed on one occasion when tested by a particular examiner it would be more satisfactory, and the learner might well feel that it was fairer, if on a subsequent occasion he had the right to be examined by someone else. Would it not be possible for the regulations to be amended so as to make provision for this ?

The Luck of the Game

Police reports from all over the country show shortages, some of them quite considerable, in manpower. It is not surprising, therefore, that the police, in an effort to give adequate attention to urgent work, have to devote less time than they otherwise might to lesser problems, including that of obstruction by parked cars. One reaction to this is perhaps natural but quite illogical. The motorist, ever on the look out for somewhere to park, chooses a certain spot and gradually gets into the habit of parking there. If there were more police available it is highly probable that he would find himself invited to appear at the local magistrates' court before the habit developed, but as things are the motorist feels that he has a grievance when complaints from other people, or traffic blocks, compel the police to take action by way of a "raid" which leads to a number of motorists being summoned. He will not accept that the roads are meant, in the main, for the passage of vehicles and not for parking, and instead of working out how much he has saved by free parking over the period when the police have been too busy to attend to him he complains of unnecessary police interference when they do take action.

Even the courts sometimes appear to support this illogical attitude, and we read of magistrates reducing the amount of fines which they otherwise would consider appropriate because the motorists had been taken "entirely by surprise." Their surprise should be due to their having been given so much rope and not to the fact that at long last their sins have found them out.

A Good Example

The Food Hygiene Regulations, 1955, do not at present apply to the Crown; although by s. 122 of the Food and Drugs Act, 1955, they may be applied by Order in Council. There must be many canteens and other facilities for the supply of meals in government offices and establishments, and it is satisfactory to read that the Post Office without waiting for any formal application of the regulations has decided that both the spirit and the letter are to be observed in all Post Office canteens. It is stated the department has about 500 refreshment clubs which serve 400,000 main and 830,000 light meals each week to its staff of 350,000. It is considered that it would be indefensible for the Government as employer to allow in its own catering establishments standards falling short of those imposed by law on others.

The Dock

A man summoned at Liskeard for failure to pay National Insurance contributions refused to enter the dock, saying "When a man goes into the dock they can pin anything on to him. But when he stays outside he's all right." Neither the bench, officials nor his own solicitor, could persuade him. The case was adjourned, and after the luncheon interval the defendant was not present. Apparently he had refused to take advice from his solicitor, who withdrew from the proceedings, and the defendant was fined in his absence.

Practice differs among magistrates' courts about the use of the dock. In some, defendants in all criminal cases are required to be in the dock. In others those who have appeared in answer to a summons are allowed to stand or sit in front of the dock, only those who have been arrested being put in the dock. The latter practice seems hardly satisfactory, since it means that a man who has been arrested for being drunk, or who has been arrested on a warrant after failure to appear to answer some minor charge has to go into the dock, while a defendant summoned for forgery or for fraud on a grand scale is allowed to be in front of, and not required to enter, the dock.

Many people think the solution is to abolish the dock, or at least to make no use of it unless a defendant is known to be likely to be violent. Outbreaks of violence in court are now rare, and with a proper number of police and ushers it is generally possible to preserve order and to restrain any excited defendant. The defendant at Liskeard appears from the newspaper report to have been rather eccentric in his behaviour, but he is not alone in feeling that to be in the dock is a disadvantage to a defendant because he feels a prisoner already in custody whom people will believe to be guilty. However wrong this impression is, it may be real, and it is a pity that it should exist.

It is obvious that the defendant must occupy an allotted place in the court, facing the bench and in the best position to be seen and heard. If an enclosure is desirable, it need not, perhaps, be so like a narrow cage as most docks are.

Appeal Against Inquest Verdict

It does not often happen that proceedings are taken to question the verdict of a coroner's jury, but leave to move for *certiorari* has quite recently been granted to the father of a youth upon whose body an inquest had been held and a verdict returned that he committed suicide while the balance of his mind was disturbed.

In another case where the cause of death of a former miner was in issue,

and a verdict of death from natural causes was recorded, a relative of the deceased indicated that there might be an appeal against the verdict, since a finding that the man had not died from pneumoconiosis would mean that the widow would lose various benefits.

The jurisdiction of the Queen's Bench is thus stated in *Halsbury's Laws of England* (2nd edn.) vol. VII, p. 684: "The common law jurisdiction of the Queen's Bench Division of the High Court to quash an inquisition is untouched by the statutory powers conferred upon the High Court by the Coroners Act, 1887." Among the grounds upon which coroners' inquisitions have been quashed are that the facts being set forth in the inquisition did not warrant the finding of the jury, and that the finding of the jury was uncertain, and that it did not sufficiently describe the manner of death. *Halsbury* deals also with misreception or exclusion of evidence and misdirection by the coroner.

Education Costs, 1954/55

This is the fourth annual tabulation prepared and published jointly by the Society of County Treasurers and the Institute of Municipal Treasurers and Accountants: it is full of vital information about this colossus among local authority provided social services. The extent to which the education service overshadows others is apparent from these figures:

Service	*Total Net Expenditure in England and Wales*	*Net Expenditure per 1,000 population*
	£ million	£
Care of Children	16	380
Health Services	42	940
Welfare of the Aged	15	341
Education	380	8,590

It is also the service on which expenditure is growing faster than others: net expenditure in 1954/55 rose 13 *per cent.* as compared with the previous year, while the number of children to be educated increased by only 2 *per cent.* The continued rise in the cost of educating each child is shown in this table:

Year	*Number of Pupils per full-time Teacher*		*Cost per Pupil*	
	Primary	*Secondary*	£ *Primary*	£ *Secondary*
1950/51	30	21	21	36
1953/54	31	20	26	47
1954/55	31	21	28	50

Substantial further cost increases must be faced in future years, particularly in relation to teachers' pay. Equal pay for women and the new salary scales will add heavily to education expenditure, over one half of which is devoted to payment of salaries and wages.

The grant for each education authority is calculated by adding to a figure of £6 per pupil, 60 *per cent.* of net expenditure and deducting the produce of a rate of 30*d.* (revised provisionally to 17·85*d.* from April 1, 1956, because of the revaluation). The considerable fluctuations in overall grant percentage which this method produces are illustrated in the return. We quote a few examples:

Authority	*Effective percentage grant on main education services*
Counties	
Durham	66
Isle of Ely	66
Lincoln (Holland)	66
Surrey	50
Sussex—West	50
Sussex—East	48
County Boroughs	
Merthyr Tydfil	65
St. Helen's	65
Walsall	65
Blackpool	46
Bournemouth	39
Eastbourne	35

The chief cause of differences in education costs is the pupil-teacher ratio: the return shows that the Welsh authorities spend relatively more money on teachers than their English counterparts: their costs are likewise higher. Substantial cost differences are shown for other expenditure heads, for example, upkeep of buildings and grounds: these should repay investigation.

Children Service Statistics, 1954/55

This return, published jointly by the Institute of Municipal Treasurers and Accountants and the Society of County Treasurers, is different in one vital aspect from practically all the other returns published by the same bodies: it shows a contraction of service and a reduction of unit cost. The table illustrates this point:

Totals and Averages for all Authorities	1953/54	1954/55
Total rate borne expenditure —amount	£8,338,000	£8,356,000
Total rate borne expenditure —rate equivalent	5·92*d.*	5·80*d.*
Total rate borne expenditure —per 1,000 population	£189·1	£188·75
Total rate and grant borne expenditure—ditto	£381·6	£380·4
Number of children in care of local authorities	65,300	64,600
Number of children in care per 1,000 population under 18	6·2	5·5

The real reduction in cost per 1,000 population is greater than shown because of continuing inflation in 1954/55; and it is an encouraging sign also that the number of children boarded out has increased during the year by 1,200 to a total of 28,700 with a corresponding reduction in the number provided for in children's homes provided by local authorities.

Considerable variations still exist between authorities in the number of children boarded out as these figures show:

	No. of Children in Care	*No. Boarded Out*	*Percentage of Total Boarded Out*
Counties			
Cheshire	883	565	64
Dorset	360	280	78
Durham	1,053	347	33
Kent	2,189	918	42
Lancashire	1,500	988	66
London	8,866	1,947	22
York—West Riding	1,924	727	38
County Boroughs			
Barnsley	120	53	44
Barrow-in-Furness	88	52	59
Bootle	97	60	62
Bournemouth	275	223	81
Great Yarmouth	52	17	33
Leeds	693	215	31
Nottingham	576	404	70
Middlesbrough	249	83	33
Sunderland	340	80	24

Remand homes continue to absorb a quite disproportionate amount of expenditure: the return shows a cost of £8 11*s.* per 1,000 population, an extremely expensive figure for the few children accommodated.

The statements of costs per week for the various types of local authority maintained homes are worthy of close study: for instance the extremely wide variations in staffing costs should repay detailed investigation by the high cost authorities.

A blemish in the return, to which we have referred in a previous review, still persists. We refer to the misdescription on the summary page of a line of costs as referring to Wales. In fact it refers only to the Welsh counties, and to be accurate should, of course, include the Welsh county boroughs. At present the latter are lumped with their English counterparts under the general head of "County Boroughs."

Fire Service Costs

The fire service has shown a welcome tendency to slacken appreciably the rate of growth of its expenditure. Figures prepared and published by the Society of County Treasurers and the Institute of Municipal Treasurers and Accountants show increases as follows:

Year	*Expenditure Met from Rates and Taxes*	*Increase Over Previous Year*	*Percentage Increase*
	£	£	
1952/53	16,720,000	1,400,000	8
1953/54	17,360,000	640,000	4
1954/55	17,750,000	390,000	2

Expenditure on pay and associated charges accounts for about two-thirds of the total cost of the service, rates of pay

being laid down by the Home Secretary after receiving advice from the two National Joint Councils concerned. There is no opportunity therefore for any local decision directed towards economy on remuneration of personnel but there is room and opportunity for local initiative regarding numbers employed. It was in 1954 that the Select Committee on Estimates recommended a complete review of fire risk categories (which in effect determine the number of men employed in each area) but little seems to have resulted from this recommendation so far: the published figures show a slight increase in authorized whole-time establishments to 20,096 at December 31, 1954.

We quote examples of fires attended in relation to personnel employed, which show broadly the same position as in previous years except that in these latest figures the number of whole-time personnel has slightly increased.

Authority	*Number of Separate Fire Stations*	*Number of calls Received in 12 Months**	*Personnel*	
			Whole-Time	*Part-Time*
Durham	24	1,156	334	225
Hereford	13	241	43	119
Monmouth	17	317	100	227
Barrow-in-Furness	1	107	44	5
Burton-upon-Trent	1	74	39	11
Eastbourne	1	70	41	11
Hastings	2	111	45	14
Leeds	5	850	223	—

* Excluding chimney fires

APPLICATIONS TO RESTORE DRIVING LICENCES

When a person has been disqualified for holding or obtaining a driving licence by virtue of a conviction or order of a court, he is at liberty to apply under s. 7 (3), Road Traffic Act, 1930, " at any time after the expiration of six months from the date of the conviction or order," for the restoration of his licence. He must make his application " to the court before which he was convicted, or by which the order was made." It would seem, therefore, that where a person is convicted of an offence that may involve disqualification before one court but the actual order of disqualification is made by another court, he has the choice of applying to either court for the removal of the disqualification. He certainly cannot apply to both. From the section it appears to be for the applicant to select the court to which he makes his application. There seems to be no restriction on his choice (although the practice differs throughout the country). He can apply either to the convicting court or to the one which made the order of disqualification. Such a situation can arise when a person is convicted before a magistrates' court of driving whilst under the influence of drink or drugs and disqualified for a period. If he appeals to quarter sessions against his conviction and/or sentence and the appeals committee at quarter sessions increases the period of disqualification, then the appeals committee clearly becomes the court " by which the order was made." Under s. 7 (3), it seems in such circumstances that an application for the removal of the disqualification can eventually be made either to the magistrates' court as the convicting court or to the appeals committee at quarter sessions as the court by which the order was made.

Difficulties have arisen from time to time where an application is made to a magistrates' court as the convicting court for the removal of a disqualification imposed by the appeals committee at quarter sessions. Under s. 7 (3), the court considering the application may have regard to " the character of the person disqualified and his conduct subsequent to the conviction or order, the nature of the offence, and any other circumstances of the case . . ." Having heard evidence of such a nature, however, it is quite open to the magistrates' court to say, in effect, " We do not know what was in the minds of the appeals committee when they imposed the order of disqualification, and we can see no reason for interfering with their decision." This, it can well be argued, amounts virtually to a refusal of the application on its merits. Conversely, it can be said that what the court is really saying is that the application is misconceived and should have been made to the court which made the order. Resolving this problem may become a matter of vital importance to the applicant as, under the proviso of s. 7 (3), " where an application under this subsection is refused, a further application thereunder shall not be entertained if made within three months after the date of refusal." If, therefore, the conduct of the application before the magistrates is of such a nature that it can be said to be a hearing of the application on its merits, resulting in a refusal of the application, the unfortunate applicant is estopped from re-applying until a further three months have elapsed.

This difficulty does not, of course, arise if the magistrates' court says, in effect, *before* entertaining the application or inquiring into its merits, " we think that this application would be more properly made to the appeals committee at quarter sessions." In circumstances such as these, the application would clearly remain unheard, no adjudication would have to be pronounced and the applicant would be entitled to renew the application immediately to the court which made the order.

The difficulty of resolving whether or not a magistrates' court had heard and adjudicated upon an application for the restoration of a driving licence arose during a recent application before the county of London sessions. Counsel for the respondent put the facts before the court. The applicant had been convicted at a metropolitan magistrates' court of driving whilst under the influence of drink or drugs and had been sentenced to two months' imprisonment and disqualified for holding or obtaining a driving licence for a period of 12 months. He appealed to quarter sessions against the sentence and his appeal was allowed—the sentence being varied to a fine of £30. The period of disqualification, however, was increased to two years. After some 15 months he made application to the magistrates' court—the convicting court—for the removal of the disqualification. At first, it appears, the learned magistrate was unwilling to hear the application on the ground that the appeals committee had increased the disqualification. Then, the respondent maintained, the magistrate decided to entertain the application, heard it and adjudicated upon it. The register of the magistrates' court had in fact been marked " application refused," and the respondent submitted that the learned magistrate had clearly heard and decided upon the application on its merits—instead of refusing it he could have granted it, in which case there would have been no complaint. As it was, it seemed that he had taken the view that as the appeals committee had considered the proper period of disqualification to be two years, he was not justified in interfering with their decision. The respondent submitted that the proceedings at the magistrates' court, which had taken place about a week previous to the proceedings at quarter sessions, in fact amounted to an application within the meaning of s. 7 (3). If that was so, quarter sessions had no power to entertain the present application, which was a new one and was made within three months of the refusal of the preceding one, contrary to the proviso in s. 7 (3).

In reply, counsel for the applicant argued that the proceedings before the magistrates' court did not amount to an application under s. 7 (3). The learned magistrate had, in fact, sent the applicant back to quarter sessions because he—the magistrate—took the view that he had no jurisdiction in that he did not

know what was in the minds of the appeals committee when they increased the period of disqualification. The magistrate may have purported to hear the application, but he did not consider all the matters mentioned in s. 7 (3)—*viz.*, the applicant's character, conduct subsequent to the conviction, nature of the offence and other circumstances—at the proceedings. He had made it clear that he did not adjudicate upon the evidence he had heard; and the applicant now submitted that the application had not been dealt with on its merits and that, as such, the application was never effectively before the magistrates' court. Consequently, it was not a new application that was now being sought but was still the original application being remade at what the learned magistrate had considered to be the proper quarter. The court was now being asked to say that the proceedings before the magistrates' court did not constitute an application within s. 7 (3), and that it had power to deal now with the application.

The learned deputy chairman said that, in his view, the application must have been entertained and heard at the magistrates' court. The magistrate had heard evidence and had marked the register "application refused"—not "application not entertained" or "not heard," but "application refused." This could not mean anything other than that the application had been made and determined. The magistrate could well, it seemed, have granted the application after what he had heard instead of refusing it. In such circumstances he concluded that the application had in fact been made, entertained and heard at the magistrates' court and the proceedings there must be treated as the refusal of an application within the meaning of s. 7 (3). It was unfortunate, but the applicant was prohibited from making a new application within three months of the date of refusal, and quarter sessions had therefore no jurisdiction to hear the present application. It would have to be made again at the proper time.

LAW AND PRACTICE OF OBSTRUCTION

(*Concluded from p. 279, ante*)

It should be noted, for the purposes of comparison with some similar enactments, that this says nothing about obstructing any person: the offence is on the face of the Act complete if the thoroughfare is obstructed by any sort of vehicle. The defendant had placed in the highway a vacuum cleaning engine, to which were connected tubes from a customer's premises. There was no difficulty in passing with vehicles or on foot. Mr. Lane, the magistrate, found as a fact that the defendant was doing something reasonable in time and place, and not occupying an excessive portion of the street, but held that the vehicle was not being "loaded," within the meaning of the exception for loading and unloading, and that in law there was obstruction for which he must convict. On appeal by Case Stated, counsel did not argue that the engine was not a cart, carriage, sledge, truck, or barrow, and so was not within the words of the section, which some might have thought a possible defence. The learned magistrate spoke of it several times by the name of "truck." Mr. Danckwerts relied largely upon *Original Hartlepool Collieries* v. *Gibb*, *supra:* that is, upon Jessel, M.R.'s criterion of reasonableness and the right of one neighbour to overlap another's premises, thus inviting the Divisional Court to read into the statute an adverb ("unreasonably") which was not there. Mr. Macmorran, *contra*, pointed out that the vacuum cleaning company were not working their engine outside their own premises, but had brought it to the street for purposes of their trade.

Lord Alverstone, C.J., in giving judgment said: "There is no evidence on which we can find (*sic*) that there was wilful obstruction in this case"—a strange remark, first because the company had most obviously put the thing there wilfully, and secondly because it was for the magistrate to find the facts. Kennedy, J., relied rather on the general usage of street traders to obstruct the London streets (a dangerous line, coming near to acceptance of the notion, foreign to English law, of repeal by desuetude), and Wills, J., simply concurred. The decision may well have been good sense; vacuum cleaners were an innovation of general benefit; they do not ordinarily stand outside the premises being cleaned for longer than is neccessary for their purpose, and in the particular case no one had suffered. But the judgments can not be called acute. Nor can a reference to the case which was made by Lord Alverstone two years later, in *Hinde* v. *Evans* (1906) 70 J.P. 548, which it will be convenient to mention next. Under s. 78 of the Highway Act, 1835, a driver was charged, that he "did unlawfully and wilfully obstruct the free passage of a certain highway . . . by then and there leaving a horse and trap thereon for a long and unreasonable time, to wit 70 minutes and without just cause." The charge came under the portion of the section which says that a driver commits an offence "who shall leave any cart or carriage on such highway so as to obstruct the passage thereof." Leaving as well as obstruction was therefore of the essence of the case, and the defence set up was that the driver had not left the horse and trap, because he had put a boy in charge of them. That he had done so was not disputed, and the magistrates held it to afford a complete defence in law, so that they did not consider whether there was obstruction or, if so, whether it was wilful. The Divisional Court, again under Lord Alverstone, C.J., sent the case back for the magistrates to hear the evidence; the boy's presence might, they said, properly be taken into account in weighing the defendant's conduct, but a horse and trap were, in law, none the less "left" if left in charge of some one other than the driver. In course of his judgment, Ridley, J., said: "It ought substantially to be an obstruction: *Stimson* v. *Browning* (1886) 30 J.P. 312," which led Lord Alverstone to add: "Since Ridley, J., has referred to *Stimson* v. *Browning*, I ought to say that since *Stimson* v. *Browning* there has been *Dunn* v. *Holt*, which shows that where there is wilful obstruction of the road there may be an offence, even though nobody is obstructed." This looks very odd, when compared with *Dunn* v. *Holt*, *supra*—where the defendant had wilfully put his engine in the road (in the sense that he brought it there deliberately in fulfilment of a contract); the magistrate found that it did obstruct the road (though not any person), and Lord Alverstone himself said there was no offence. This bringing together of the actual judgments shows how unsafe it may be to reason from one statute to another, where they say much the same thing but not quite the same thing—and, indeed, how easy it is even for Judges to mislead themselves by such cross reference.

This danger is again well illustrated by a remark of Shearman, J., in *Gill* v. *Carson and Nield*, to be noticed fully *infra*. Counsel had cited *R.* v. *Long* (1888) 52 J.P. 630, and the learned judge said it had been overruled by *Hinde* v. *Evans*, *supra*. Now *Hinde* v. *Evans* was, as we have just seen, a case upon s. 78 of the Highway Act, 1835, whereas *R.* v. *Long* was a case upon s. 28 of the Town Police Clauses Act, 1847. Section 78 made it an offence wilfully to obstruct the highway in various ways (and

the actual decision of the Divisional Court was not upon the question whether there had been obstruction), whereas s. 28 made it an offence wilfully to obstruct the highway " by means of any cart, carriage, sledge, truck, or barrow, or any animal or other means," and the actual decision in *R.* v. *Long*, as Avory, J., pointed out later in *Gill* v. *Carson and Nield*, was that the words " or other means " were to be construed *ejusdem generis*, so that no offence under that part of the section was committed by three louts who walked abreast and forced pedestrians off the footway. And in connexion with the danger of referring from one case to another, when the facts and the enactments involved are different, it is interesting to note that *Stimson* v. *Browning* was mentioned by Ridley, J., in *Hinde* v. *Evans*, *supra*, as showing that an obstruction was not an offence unless substantial, but it did not show this, and indeed it had nothing to do with obstruction and was totally irrelevant. The charge was of lighting a fire within 50 *ft.* of the middle of the road, in breach of one of the enactments in s. 72 of the Highway Act, 1835, and Willes, J., who analyzed the section's grammar, held with the concurrence of Keating, J., that the prohibition did not apply unless the fire was " to the injury of the highway, or to the injury, interruption, or personal danger of any person travelling thereon." The enactment in s. 72 which makes it an offence wilfully to obstruct the passage of a highway comes later in the section, and is not governed by the words " to the injury, etc.," which we have just quoted.

We have said enough to show that the intricacies of the present law can be too much even for the High Court. Notes of the Week we have printed in the last few years have shown that the law is treated with contempt by an influential section of the public, and largely ignored by public authorities. Lord Goddard remarked that enforcement depended primarily on the police, in the case noticed at p. 98, *ante*: we are credibly informed that the state of obstruction at the place to which that case related is as bad as ever. In truth no words of ours could make the present contempt for law plainer than it is seen to be, by every person using the streets of London and other towns. The Minister of Transport and Civil Aviation announced in the House of Commons on March 21 that he was setting on foot a new inquiry into the condition of the London streets and afterwards his staff indicated a desire to classify them under three headings: namely those in which no parking should be allowed at all; those where " short term parking should be allowed for a reasonable time," and those where all day parking might be permitted at a relatively high charge. These headings are linked with the proposal for parking meters, which is still before Parliament. The inquiry might, it was said, produce a possible fourth heading, streets in which parking for limited periods could be allowed without charge. Whether this classification would include permanent parking (and if so under which heading) did not appear: we are thinking of the person who, as we said in a Note of the Week at p. 158, *ante*, knows when he buys a car that he has no place in which to keep it, and therefore sets out from the first to provide himself with " garage space " at public cost, interfering with the rights of everybody else, and often impeding access to his neighbours' premises. Between this form of selfishness and the man who stops his car in the street while he makes a trifling purchase there is an infinite variety of cases.

The Minister's tripartite or quadruple division may or may not be flexible enough to provide for all of them, and (apart from the proposed parking meters) he did not make it clear how the new arrangements contemplated will fit into the existing law upon obstruction, or the law upon parking specifically contemplated by that name. It might surprise a newcomer to this field of legislation to discover how little statute law there is, dealing with " parking " as distinct from general use or misuse of the highway. By s. 10 of the London Traffic Act, 1924, and sch. 3 thereto, the Minister of Transport and Civil Aviation is empowered to make regulations, *inter alia*, with respect to places in streets where vehicles, or vehicles of any particular class or description, may or may not wait either generally or at particular times. The Act does not use the words " park " or " parking," but this is used in some of the Minister's regulations made under the Act. The first time the words occur on the statute book is in s. 68 of the Public Health Act, 1925. It will be seen that the power (" may or may not wait ") in the London Traffic Act is both positive and negative. In England and Wales outside the London Traffic Area the positive and negative powers are separated. An order made under s. 68 of the Public Health Act, 1925, creating a parking place on a highway permits vehicles to wait on the highway in a manner that would or might be otherwise unlawful, and the ordinary law of obstruction is modified to that extent. This is the positive power to allow parking. The power to forbid is given by s. 46 of the Road Traffic Act, 1930, as amended by s. 29 (4) of the Road and Rail Traffic Act, 1933, and is worked through an order made by a local authority (of a type limited by the Acts), and confirmed by the Minister of Transport and Civil Aviation. This order may prohibit or restrict waiting, generally in a named street or (for example) on one side of a street on certain days and on the other side on other days. Such an order does not, however, render legal the waiting (or parking) which is not prohibited or restricted. Vehicles left standing in a place where they are not prohibited from doing so by an order under these Acts are subject to the ordinary law contained in the Highway Act, 1835, the Town Police Clauses Act, 1847, and the Motor Cars (Construction and Use) Order, 1955.

What next ?

The first step should be for the authorities concerned, from the Home Secretary and Minister of Transport and Civil Aviation to highway authorities and police authorities, to remind themselves and their subordinates that the highway exists and is maintained (nowadays at great expense) for the movement of vehicles and pedestrians, and for access to abutting property. Whatever right exists to station vehicles on it is incidental and subordinate. The existing law should be administered accordingly. Public exigencies, common sense, and decisions of the High Court, suggest that in modern times some rope can be allowed to goods vehicles and even to the person who leaves his car while, and because, he is at the time engaged on some work of general benefit, which would be less efficiently performed if he could not leave his car. Two everyday illustrations will make this clear. The medical practitioner visiting a patient can properly leave his car outside the patient's house; the same reasoning does not apply to leaving it outside his own house. The commercial traveller with a heavy case of samples may be forgiven for leaving his car outside his customer's shop; he has no such excuse for leaving it outside his own house all night, for the purpose of making an early morning start. Beyond a few narrow categories of persons engaged at the moment in some task of general utility for which a car is necessary, it would be advantageous, not least to motorists themselves when they wish to move and not stagnate, that street parking elsewhere than in parking places properly appointed should be stopped.

The second step should be a serious examination of the law; the consolidation and modernization of the provisions dealing with obstruction, and a determination of what ought and ought not to be made lawful, leading to the final step of legislation which could and would in practice be enforced in the interest of the whole community.

THE LOCAL AUTHORITY AS LANDLORD

In a series of three articles it is proposed to consider the position of local authorities as landlords, first as to their powers to grant leases and the necessity (where this may arise) to obtain Ministerial approval, and secondly their special powers as landlords under the general law affecting the particular type of premises, such as the Rent Acts, the Agricultural Holdings Acts, the Landlord and Tenant Act, etc.

(I) *Powers to grant leases*

It may often be the wish of a local authority to grant a lease of some property they own for some specific purpose, but their advisers should first ensure that adequate powers exist, as the statutory provisions on the subject are complicated and depend mainly on the purposes for which the land is at present held. A mere licence, *e.g.*, to use a piece of land for a few days for the purposes of an amusement fair, is not normally a lease, for a lease must grant the *exclusive* possession of the land for a determinate period and similarly such agreements as those granting the catering rights in a park or the photography rights on a foreshore are not leases. The mere fact that a transaction may be called a " licence " or an " agreement " however, may not prevent it from being a lease, and a colourable device is not sufficient, for the essential factor is the true intention of the parties. A local authority who have no powers—or inadequate powers—to grant a lease should not try to circumvent the law by granting a " licence," unless they reserve exclusive possession of the premises to themselves, thereby ensuring that the relationship of landlord and tenant cannot be created. It is now proposed to consider the general powers of local authorities* to grant leases, *servitium.*

(A) *Local Government Act*, 1933, *s.* 164

Under this section, any local authority may let any land which they may possess, *with* the consent of the Minister of Housing and Local Government for any term, or *without* such consent for a term not exceeding seven years. The lease must not be in breach of any trust, covenant or agreement binding on the authority (1933 Act, s. 179 (*d*)), but otherwise the terms are at the discretion of the local authority, subject to the Minister's consent in cases of leases exceeding seven years. In the case of a long lease, the Minister will normally have to be satisfied that the rent is reasonable; the principle of para. 39 of the Memorandum to Circular 34/55, to the effect that the full current market value must be obtained in respect of any disposal of local authority land, will presumably apply, and certainly the Minister will require the District Valuer's report to be obtained before he gives his consent.

Although this section refers to " any land " of the local authority, it is clear that the power does not apply to any land held under the Housing Acts, the Public Libraries Acts or the Allotments Acts, as it is provided by s. 179 (*g*) of the 1933 Act that—in effect—the present section shall not apply thereto. Incidentally, s. 179 (*g*), incorporating sch. 7 to the 1933 Act, is still in force for this purpose (although it is not printed in vol. II of the current edition of *Lumley*, at p. 1886), as its repeal by s. 6 and sch. 4 to the Acquisition of Land (Authorization Procedure) Act, 1946, was limited in its effect to cases of compulsory acquisition.

A more difficult question arises in connexion with land held for the purposes of s. 164 of the Public Health Act, 1875, for use as public walks or pleasure grounds. Section 164 of the 1933 Act is unrestricted in its terms, except by s. 179 thereof, which says nothing about the 1875 Act or any other of the Public Health Acts. It could therefore be argued that a public pleasure ground could be let under s. 164 of the 1933 Act, for less than seven years, whereby exclusive use thereof is granted to (*e.g.*) a local football club. Opinion in local government circles, however, seems to be quite firmly of the effect that by virtue of the essentially public nature of the use contemplated by the 1875 Act, there can be no power to grant any lease of such land whereby the public are totally excluded from the ground; the grant of such a lease, it is argued, completely belies the very nature of the land as a public pleasure or recreation ground. The enclosure within limits of football pitches, etc., is permitted under s. 76 of the Public Health Acts Amendment Act, 1907, and licences for the playing of matches on particular days at specified times may presumably be granted, but if it is desired to lease a recreation ground, the local authority must, it is submitted, either use some local Act power, or first appropriate the land for some other specific statutory purpose (under s. 163 of the Local Government Act, 1933), in which event the consent of the Minister will be necessary.

The powers of s. 164 have been expressly applied for the benefit of education authorities (the consenting authority being here the Minister of Education), by s. 90 (3) of the Education Act, 1944, and for the benefit of a " special road authority," by s. 10 (3) of the Special Roads Act, 1949 (the consenting authority here being the Minister of Transport and Civil Aviation).

(B) *Local Government Act*, 1933, *s.* 172.

Under this section, the council of any borough (county borough or non-county borough) may grant a lease of corporate land, without Ministerial consent, in the case of a building lease for a term not exceeding 99 years, in the case of a mining lease for not more than 60 years, and in any other case, for not more than 21 years; " building lease " and " mining lease " are defined in s. 172 (4). " Corporate land " is defined in s. 305 of the Act and may be described as land held by the borough council for no specific statutory purpose, the normal case being land held for investment purposes or property (often valuable sites in the centre of the town) which has been owned by the corporation " time out of mind " under some forgotten bequest or ancient acquisition. It is possible, with the consent of the Minister under s. 163 of the 1933 Act, for land acquired for some specific statutory purpose and no longer required therefor, to be appropriated for corporate purposes, and then leased under the present section.

(C) *Local Government Act*, 1933, *s.* 169.

This section applies only to parish councils or (where there is no parish council) the representative body of a parish acting with the consent of the parish meeting. Such local authorities may lease their land for any length of term and any purpose (again, it is submitted, subject to the restriction on public pleasure grounds referred to under s. 164, above), subject, however, in all cases to the consent of the Minister of Housing and Local Government. In the case of land held for charitable purposes, any consents or approvals required under the Charitable Trusts Acts will have to be obtained, instead of the consent of the Minister.

J.F.G.

(*To be continued*)

* In this article this term is used to include, except where the contrary appears, county borough, county and county district councils.

MISCELLANEOUS INFORMATION

CITY AND COUNTY BOROUGH OF NORWICH: CHIEF CONSTABLE'S REPORT FOR 1955

The actual strength of the force on December 31, 1955, was 197 and there were 26 vacancies. This was exactly the number by which the authorized establishment (which now stands at 223) was increased in September, 1955. Six of this increase of 26 were to enable adequate coverage to be given to the large housing estates built on the outskirts of the city since the war, and the other 20 were to provide the extra men needed because of the additional fortnightly rest-day. The chief constable reports that recruitment during 1955 was generally satisfactory. Ten men and two women were appointed on probation from 58 applicants. Seven applications were still under consideration at the end of the year. During the year one man and one woman resigned after less than 12 months' service, and two men and one woman resigned without sufficient service to entitle them to any pension or gratuity. Fewer members of the force were absent sick during the year than in 1954 and 510 less days were lost on this account.

Under the heading of " training " attention is called to the courses for cadets which were initiated during the year. It is hoped that these will prove of benefit to both the cadets and to the police service. There are six cadets attached to the Force. The chief constable emphasizes that he has taken no steps to secure their exemption or deferment from national service as in his view such service is " vitally important as a mind broadening and character building occupation." He looks to the cadets, as time goes on, to provide the main source of recruitment to the regular force.

Regret is emphasized that more volunteers do not come forward to bring the numbers of the special constables nearer to their authorized establishment. Some 270 more are required, and the chief constable is always on the look-out for the right type of active individual ready to give time to this important civic work.

Although the number killed on the roads (five) was the same as in 1954 there were 11 more cases of serious injury (total 66) and 151 more of slight injury (total 487). We are not sure that we agree, without more information, with the view expressed in the report that the increase in the number of injuries is not so serious as it may appear, because the majority of them were trivial. Is not the margin between a slight injury and a serious injury (or even death) rather a narrow one, and is not the most important consideration the fact that there was an accident rather than that the injury was only slight ?

An interesting theory is put forward that there may be an increase in accidents to child cyclists because the group of children resulting from the immediate post-war increase in the birth rate will be coming on to the roads with their first cycles. Parents are urged to ensure that before this happens the children concerned are taught how to behave on the roads, with special attention to the Highway Code. The report emphasizes the responsibility of parents in this respect. We agree with the chief constable's view that for all road users courtesy, consideration and care should always be foremost in their minds, and we would suggest that another " c " " concentration," might be added. There are all too many examples to be seen of both drivers and pedestrians who just will not concentrate their minds on what they are doing when they are crossing, or driving on, the roads.

We are interested, and rather surprised, to learn that injuries in the home, both fatal and non-fatal, continue to exceed in number those due to road accidents. Children and old people are the chief victims.

Indictable crimes increased by 88, on the 1954 figure, to 970. The detection rate, 70·01 *per cent.*, was extremely high. Three hundred and twelve persons (including 107 juveniles) were charged with the 680 detected crimes. The burden of work falling on magistrates' courts is shown by the fact that 264 of the 312 were tried summarily. Attention is called to the fact that in spite of the increase of 88 the figures are still reasonably satisfactory because the 1954 figure was the lowest since 1938 and, apart from 1954, the same applies to the 1955 figure.

SHEFFIELD JUVENILE COURT REPORT

The report of the juvenile court panel for the city of Sheffield for 1955 refers to a comment in the 1954 report on the marked increase in the number of charges of larceny which more than accounted for an increase in the total number of indictable offences from 323 to 363. In 1955 the offences of larceny declined by over 50, but the offences of breaking and entering (a more serious type of offence) increased by almost the same number.

The 14 age group has again provided the court with the largest number of indictable offenders, closely followed by the 13 age group, 12 year olds have done better than in any year since 1947, but on the other hand nine year olds were 20 more than in 1954, in fact it was the worst recorded year in that age group, which seems to confirm says the report the unpredictability of the final results.

As is pointed out, these figures need to be looked at with due regard to variations in the number of children in each age group. Among girls the greatest number was in the 16 age group.

On attendance centres, the report states: " Attendance at the centre deprives a boy of his freedom on six Saturday afternoons, spread over a period of three lunar months. Half of the period is spent in doing manual work which is intended to be arduous and exacting, and the other half is taken up in some form of useful instruction. The results are generally encouraging and especially so with the type of boy who has to be taught a sharp lesson. At the same time the attendance centre should never be considered a substitute for probation in those cases where long-term care and supervision are required."

Opinions differ about the desirability of using a remand home as a place of punishment. The Sheffield report expresses regret that, with a detention centre available, the court will not be able to send a young person to the remand home under s. 54 of the Children and Young Persons Act, 1933. That form of treatment has, in the opinion of the panel, often produced beneficial results in specially stubborn cases.

NEW FOREST RURAL DISTRICT COUNCIL ACCOUNTS, 1954/55

The total rate levied by the rural district council amounted to 19*s.* 6*d.* but whereas the rate for district council purposes at 3*s.* 6*d.* was less than the corresponding figure for 1946/47 by 3*d.* the county precept over the same period increased from 9*s.* 6*d.* to 16*s.* The penny rate in this district of 46,000 people produced £1,581 and the rate levy amounted to the quite heavy sum of £8 3*s.* per head of population.

The district received from Hampshire county council capitation grant of £24,000: because of its relatively high rateable value per head of population it would lose this sum if the agitation from certain quarters for direct payment of equalization grant to county districts were successful.

Largest items of expenditure of the council were for sewerage and refuse collection: the water undertaking showed a net deficiency of £830 which was charged to the general rate fund.

Housing cost the ratepayers £12,000, and there was a deficiency on the housing revenue account of almost the same amount which was charged against the credit balance in hand, leaving a carry forward at the year end of only £700. Rents were revised from April 1, 1955: a two-bedroom post-war house now lets for 30*s.*, a three-bedroom for 32*s.*, and a four-bedroom for 33*s.* All rents are subject to rebates under the council's differential rent scheme. The council owned 1,600 houses and bungalows at March 31, 1955.

The council advanced during the year no less than £376,000 in respect of privately owned property under the Small Dwellings Acquisition Acts and Housing Acts. Advances outstanding at the end of the year totalled £619,000.

The balance sheet shows a strong financial position, credit balances on general and special district accounts amounting to £59,000 while cash in hand totalled £86,000. (There was a sum of £23,000 owing to the county council.)

Loan debt at the year end was just under £3 million, equal to £65 per head of population, but £2,790,000 of this total related to housing, so that the balance of non-reproductive debt was small.

Both Group-Captain J. C. M. Hay, O.B.E., D.L., chairman of the finance committee, and Mr. H. S. Pring, council treasurer, have good reason to feel satisfied with the state of the finances of their authority.

BEACONTREE MAGISTRATES' COURT REPORT

Mr. Graham Barrow, clerk to the Beacontree justices, states that in the last 10 years there has been an increase of over 50 *per cent.* both in the number of cases dealt with and in the number of court sittings. This has meant that the average attendance figure of the justices is almost 60 *per annum.*

It is a fairly common experience that members of committees tend to continue in office indefinitely, and although this has certain advantages, there are some obvious disadvantages. This report contains the following: " In the past some justices have complained that once they have been elected to a committee they seemed to be expected to serve on that committee for the remainder of their period on the bench, whilst others have lacked the opportunity of taking part in the work of the probation or licensing committees. In order

to give all justices a chance of committee work new rules were passed at the October meeting recommending justices to retire from these committees after five or six years' service. It is hoped that these new rules will enable all justices who wish to do so to take part in all the activities of the court."

Magistrates' courts committees and local authorities cannot always agree about the expenditure of money in connexion with the magistrates' courts. From this report we learn that the magistrates' courts committee approved plans for the better utilization of the available space and the improvement of some " really shocking " toilet accommodation, but the Essex county council declined to accept the first resolution of the committee. There is every hope, however, says Mr. Barrow, that the second attempt will produce a fruitful result.

NOTTINGHAMSHIRE FINANCES, 1954–55—1956–57

Nottingham county treasurer, Mr. J. Whittle, B.Com., A.C.A., F.I.M.T.A., reports a precept drop of 2*s.* 8*d.* to 11*s.* 4*d.* for 1956/57, made possible by a penny rate increased by £9,060 to £21,810 and the appropriation of £150,000 from balances.

Gross estimated expenditure of the county council at £11,300,000 shows an increase of 15 *per cent.* over 1955/56. This is partly accounted for by inflation: the retail prices index had increased from 109 in December, 1954 to 116 a year later, and the index of weekly wage rates showed an increase from 111 in December, 1954 to 118 in December, 1955. In addition expansion of services had to be provided for, education being particularly prominent: 12 more primary and secondary schools are expected to be in use in 1956/57 and there will be considerable increases in the number of pupils, for example the increase in secondary modern schools will be 1,500.

A special contingency sum of £80,000 was included in the finance committee estimates to make provision for possible additional expenditure during the year including the expected Burnham Award affecting the salaries of teachers. Incidentally this illustrates the mistaken conclusions which may be drawn from comparison of estimated service costs of different authorities—a number of authorities have provided for this anticipated increase in their education committee estimates.

Nottinghamshire is not materially affected by the revaluation as its percentage increase in rateable value of 71 *per cent.* is very close to the national average of 72 *per cent.* The equalization grant is equivalent to 29 *per cent.* of net relevant local expenditure.

Capital expenditure in the county shows the usual pattern of expectations exceeding results, somewhere between a half and a third of estimates being achieved. Actual payments in 1954/55 amounted to £838,000 whereas the estimate was £1,951,000—with none of the present governmental restrictions in force. In 1956/57 there is a large increase in the amount of capital expenditure to be met from revenue, the estimated figure of £780,000 representing almost double the provision in 1955/56. This is due to the relaxation of restrictions by the Ministry of Education on financing expenditure in this manner and to the raising of the county council's limit on the rate liability from £100,000 to £225,000 *per annum.*

The abstract of accounts, which as usual is combined with the estimates, provides much information about costs and financial policy. Various reserve and special funds are maintained, included amongst which is an infant insurance fund, so far thriving. The superannuation fund is invested as to half in county council mortgages, the remainder being in long dated government securities. A switch into these securities was made in 1953/54; the immediate capital loss being more than offset by eventual capital gain and increased annual interest.

Loan debt outstanding at March 31, 1955, totalled £4,800,000 and the average rate of interest was 3·47 *per cent.* One of the factors keeping this rate low was the policy of utilizing revenue balances as temporary borrowings at rates of interest below those ruling for medium and long-term loans.

The policy of making money available to officers for the purchase of cars is evidently popular. The amount outstanding at March 31, last, was £60,000, the average debt per officer being £288.

BEACONTREE JUVENILE COURT REPORT

Mr. F. M. Wright, chairman of the Beacontree Juvenile Court Panel, in the report for 1955, recommends conditional discharge coupled with binding over the parent. There were 64 instances in which the child was discharged conditionally, the parents being ordered to give security for their child's good behaviour. This method says the report has much to commend it, it is simple, it places the responsibility in the proper place, *i.e.*, on the parents, and that it is effective is shown by the fact that during the year, no parent was called upon to forfeit his recognizance.

The number of approved school orders showed a substantial increase, and so did the number of probation orders. Mr. Wright notes that some approved schools are being closed but he expresses the opinion that it is difficult to imagine a more suitable form of treatment than that afforded by a good approved school in cases where the severity of the offence and the home background are not conducive to probation.

Mr. Wright feels that the most serious feature of the statistics is the 35 *per cent.* increase in care or protection cases. There was a remarkable drop in 1953, from 92 to 55, but the figures have risen steadily since. While it is true that in 1955, several cases were brought involving large families of young children, the panel is perturbed to note the steady increase in moral lapses amongst girls aged between 12 and 16, a state of affairs which is giving cause for concern to the court, probation officers and other social workers alike.

DEVON PROBATION REPORT

In the report of the Devon probation committee for 1955, attention is called to the question of schools for maladjusted children, a matter which often presents difficult problems. The point made in this report concerns the supervision of such children. The report states that the principal probation officer reported to the committee that local authorities were placing children who were subject to probation orders in schools in the county which cater especially for maladjusted children without there being any transfer of the respective probation orders to the officers acting in Devon. In such circumstances the probationers virtually ceased to be under supervision and it appeared that they had in some cases been placed in the schools without adequate inquiry being made as to the suitability of the training provided for the individual probationer. The committee obtained the details of a number of cases and submitted them to the Home Office Probation Division. The Home Office stated that they proposed to draw the attention of the probation officers concerned to their powers regarding the transfer of probation orders in appropriate cases.

A marked feature in the work of the probation officers was the development of the use of probation in the adult courts. On this the report says: " Whilst presenting the probation officers with many complex problems of accommodation, employment, domestic and financial difficulties, and sometimes previous criminal records, the officers feel that these adult cases offer them a challenge, and they feel well rewarded if their efforts secure a successful probation period."

GLEANINGS FROM THE PRESS

Evening Standard. April 4, 1956

"BRITAIN DOES NOT WANT THIS GERMAN WOMAN"

Since 1941 she has lived on national assistance

A German, Miss Johanna Fink, of Sutherland Place, Westbourne Park, who was said by detective-constable Hook to have been living on national assistance since 1941, *was sent to prison for a month at Bow Street today for making a false statement to get a certificate of British naturalisation.*

The magistrate, Sir Laurence Dunne, said: "I do not know what view the Home Secretary will take, but I hope that it will be the view I take.

"She is not the sort of person we want in this country and she has been living on the charity of this country for many years."

Detective-constable Hook said that Miss Fink, in filling in the application form, struck out the paragraph as to whether she had been involved in any criminal or civil proceedings.

"I feel ashamed"

In fact, he said, she had been convicted for larceny at Marlborough Street and put on probation for 12 *months. When the offence was pointed out to her, said the detective, she replied: "I feel ashamed, but if I had put it in I would not have got my papers."*

This woman was convicted under s. 28 (1) of the British Nationality Act, 1948, which provides that "any person who for the purpose of procuring anything to be done or not to be done under this Act makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable on summary conviction in the United Kingdom to imprisonment for a term not exceeding three months."

The Secretary of State may make a deportation order if (*a*) any court certifies to him that the alien has been convicted either by that court, or by any inferior court from which the case of the alien has been referred for sentence or brought by way of appeal of any of the offences specified in sch. 4 to the Aliens Order, 1953, and that the court recommends that a deportation order be made in his case; or (*b*) if the Secretary of State deems it to be conducive to the public good to make a deportation against the alien (art. 20 (2) of the Aliens Order, 1953. S.I. 1953, No. 1671). The offences specified in sch. 4 include any offence for which the court has power to impose a sentence of imprisonment in the case of an offender of full age. The other specified offences relate to prostitution and soliciting and (in the metropolitan police district) disorderly refreshment houses.

Article 21 of the order deals with the removal of aliens subject to deportation orders. Under para. (4) of that article an alien in whose case a deportation order has been made may be detained, under the authority of the Secretary of State, until he is deported; and an alien in whose case a recommendation for deportation is in force under art. 20 must (unless the court, in a case where the alien is not sentenced to imprisonment otherwise directs) be detained until the Secretary of State makes a deportation order in his case or directs him to be released.

If a court recommends that a deportation order be made the certificate given under art. 20 (2) (*a*) should be sent to the Home Office immediately, and a certified true copy of it should be given to the police officer whose duty it is to take the alien to prison as authority for the alien's conveyance to and detention in prison.

Evening Argus, Brighton. April 17, 1956

PLUMBER SAYS THE "BIG FREEZE" HIT HIM

Asked why he had not paid national insurance contributions, a Portslade plumber blamed the "credit squeeze" and the "big freeze."

Arthur Stanley Phillips, of Gordon Road, Portslade, pleaded guilty to failing to pay a contribution for the week beginning December 26, *and failing to return a national insurance card within six days of expiry on June* 5 *last year.*

He was fined £4 *on the first summons and* £1 *on the second, and was ordered to pay arrears of* £31 18*s.* 2*d.*

The magistrates were told that arrears from June, 1952, *to December,* 1953, *had been waived by the Ministry because Phillips pleaded business difficulties. He had not paid since that date.*

Phillips said it all started with the credit squeeze 12 *months ago, when private people could not get a bank overdraft.*

"Then the recent freeze stopped all the work and tied the money up," he said. "I have £149 *owing to me."*

Section 2 (6) of the National Insurance Act, 1946, provides that "if any employer or insured person fails to pay any contribution which he is liable under this Act to pay, he shall be liable on summary conviction to a fine not exceeding £10."

Regulation 19 of the National Insurance (Contributions) Regulations, 1948 (S.I. 1948, No. 1417) provides that "(1) in any case where an employer or an insured person has been convicted of the offence under subs. (6) of s. 2 of the Act of failing to pay a contribution, he shall be liable to pay to the National Insurance Fund a sum equal to the amount which he failed to pay.

"(2) . . .

"(3) On any such conviction . . . if notice of intention to do so has been served with the summons on warrant, evidence may be given (*a*) in the case of an employer (i) of the failure on his part to pay on behalf or in respect of the same person other contributions under the Act during the two years preceding the date of the offence, or contributions under the Industrial Injuries Act on that date or during those two years; and (ii) in the case of any conviction such as is mentioned in para. (1) of this regulation, of the failure on his part to pay any contributions referred to in the preceding provision of this sub-paragraph on behalf or in respect of any other person employed by him; and (*b*) in the case of an insured person (other than an employed person) of the failure on his part to pay other contributions as such an insured person during those two years; and on proof of such failure the employer or the insured person shall be liable to pay to the National Insurance Fund or, as the case may require, the Industrial Injuries Fund or each such Fund, a sum equal to the total of all the contributions under the Act, or as the case may be, the Industrial Injuries Act, which he is so proved to have failed to pay."

Paragraph (5) of reg. 19 provides that "any sum ordered to be paid to the National Insurance Fund or the Industrial Injuries Fund under this regulation shall be recoverable as a penalty."

In *Shilvock* v. *Booth* [1956] 1 All E.R. 382, the respondent pleaded guilty to an information charging him with failing to pay a contribution which he was liable to pay as a self-employed person. He was also found liable to pay arrears of contributions as set out in a notice served on him in accordance with reg. 19. The justices refused to order him to pay the arrears on the ground that they had no jurisdiction under reg. 19, or the Magistrates' Courts Act, 1952, or the Magistrates' Courts Rules, 1952, to make an order for payment of a civil debt on proceedings on an information for a criminal offence. The amount which an insured person was liable to pay could be recovered summarily before justices under the National Insurance Act, 1946, s. 54, on complaint and after due service of a summons thereon under the Magistrates' Courts Act, 1952, and the Magistrates' Courts Rules, 1952. Section 47 (3) of the Act of 1952 required a summons issued on complaint to be served before a magistrates' court could order payment of a civil debt. The notice served under reg. 19 of the Regulations of 1948 was neither a complaint nor a summons.

On appeal by Case Stated it was held that the justices had jurisdiction under reg. 19 (1) and (3) to order payment of the contributions and could have made such an order in the criminal proceedings then before them since, by reg. 19 (5), the unpaid contributions were recoverable as a penalty, that is to say, in the same way as a fine was recoverable.

The appeal was allowed and the case was sent back to the justices with a direction that it was their duty to make an order that the respondent should pay the contributions which it had been proved he had failed to pay, by such instalments as they might order.

News Chronicle. April 24, 1956

MAYFAIR MAN AIDS POLICE CLEAN-UP

A member of the Stock Exchange helped the police to indentify several women who were later charged with soliciting in Mayfair.

He is Captain Frank Thompson-Schwab, wealthy company chairman.

And last night the police said that, despite the possibility of publicity, seven residents in Jermyn Street have offered to give evidence against street-walkers.

So have three in Curzon Street, four in Cork Street and five in Savile Row.

Home Office order

The new drive against prostitution in Mayfair was ordered by the Home Secretary.

The help given by Captain Thompson-Schwab, who lives in Mayfair, was described at Bow Street yesterday.

Superintendent Charles Strath, from West End central police station, told the magistrates that he drove the captain along Curzon Street in a police car.

Said Strath: " *He pointed out several women. Each of them has been separately cautioned that they are annoying the inhabitants of Curzon Street by soliciting, and each has previous convictions.*"

On the increase

On Friday night nine women were arrested in Curzon Street and on Saturday seven of them were fined £2 at Bow Street and ordered to pay £2 costs.

On Saturday night 13 were arrested and charged with loitering for the purpose of soliciting. At Bow Street yesterday fines up to £2 were imposed on 10 who pleaded guilty.

One resident told me yesterday: " *I have lived here nearly 30 years. This was a decent area, but now prostitution is very much on the increase.*

" *A number of us have got together to help the police clean the place up.*

" *The presence of these women in the street is a continual embarrassment to us, our families and to friends who visit us.*"

Under s. 54 (11) of the Metropolitan Police Act, 1854, " every common prostitute or nightwalker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers " is liable to a penalty of not more than 40*s*.

Until these cases arose prostitutes soliciting in the streets of London have been prosecuted for doing so to the annoyance of passengers, that is, passers-by. The other part of the sub-section has not been used because of the difficulty in getting inhabitants to come forward. Now that residents in these West End streets are co-operating with the police proceedings are being taken against the women for being in the streets for the purpose of solicitation to the annoyance of the inhabitants.

ADOPTION ACT, 1950, s. 17 (4)

At p. 107, *ante*, we commented on a case heard in the Westminster county court. We are now indebted to the Solicitor to the Ministry of Health for informing us of the judgment of His Honour Judge Blagden in that case.

In the course of his judgment His Honour said " It only remains to consider whether this court is for the present purpose a court of competent jurisdiction. This expression must, of course, include the High Court, but if the legislature had meant it to include the High Court only it would have said so. It must, therefore, include at least some of the other courts which could make adoption orders, and may indeed include all of them. The meaning can hardly be restricted to the court which may, or to the courts which might, have made the adoption order in question because till the information is forthcoming no one can tell which those courts, other than the High Court, are. Assuming then that the expression includes at least some county courts, in the present case, in which one of the two joint applicants carries on his profession and the respondent performs his duties within our district, I have no doubt that it includes this county court. In fact I think that this court will have jurisdiction to deal with all future applications of the present type until either the Registrar-General is removed from Somerset House or Somerset House is excluded from our district."

We respectfully agree with the view taken by His Honour that the expression " court of competent jurisdiction " in s. 17 (4) of the Adoption Act, 1950, is not restricted to the court which made the adoption order. His judgment will be a useful guide to those of our readers interested in adoption cases.

Oxford Times. March 16, 1956

STOLE £14 COAT BY FINDING

Leonard Edwin Hudson, of 1 Somerton Road, Upper Heyford, was charged at Bicester on Monday with stealing by finding a £14 American coat at Middleton Stoney during December last. Hudson, who pleaded " Not guilty " was fined £5.

Inspector F. Weedon, prosecuting, said on February 17 an American officer noticed Hudson on the Base wearing the coat, which was the type issued solely to American service men. He was questioned about its possession and said he had had it since 1943, and had picked it up at Middleton Stoney.

Inspector Weedon said Hudson, who worked at the U.S.A.F. base, would know the coat was the property of the United States Air Force. He said the coat was clearly labelled and submitted Hudson had every opportunity of taking steps to return it to the American authorities, but in fact kept it and had been wearing it.

Stealing is defined in s. 1 of the Larceny Act, 1916. It includes cases where the taking is " by finding, where *at the time of the finding* the finder believes that the owner can be discovered by taking reasonable steps " (subs. (2) (ii)).

In *R.* v. *Thurborn* (1849) 13 J.P. 459, the defendant was indicted for stealing a banknote. He found the note, which had been accidentally dropped, on the high road. There was no name or mark on it indicating the owner, nor were there any circumstances which would enable him to discover to whom the note belonged, nor had he any reason to believe that the owner knew where to find it. He meant to appropriate it to his own use after he picked it up. The day after he was informed that the prosecutor was the owner and had dropped it accidentally. He then changed it and appropriated the money to his own use. It was held that he was not guilty of larceny.

In that case Parke, B., after considering earlier cases, said, " the rule of law on this subject seems to be that if a man find goods that have been actually lost or are reasonably supposed by him to have been lost, and appropriates them with intent to take the entire domain over them, really believing, when he takes them, that the owner cannot be found, it is not larceny. But, if he has taken them with like intent, though lost or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny."

That rule was approved in later cases (*see R.* v. *Christopher* (1858) 28 L.J.M.C. 35; *R.* v. *Glyde* (1868) 32 J.P. 484; *R.* v. *Mortimer* (1908) 72 J.P. 349) and was well established as the rule of law on the question of stealing by finding before the passing of the Larceny Act, 1916, where it is now expressed in s. 1 (2) (ii).

Herts Advertiser. April 13, 1956

DRIVING BAN STAYS

St. Albans city justices yesterday rejected an application by Denis Leslie Keech, of 39 Coombes Road, London Colney, for the removal of his disqualification from driving, despite the fact that Inspector C. Day said that the police raised no objection.

The chairman, Mr. W. Bird, pointed out that there was only about six weeks of the disqualification period to run.

Inspector Day said that Keech was disqualified for two years in June, 1954, for driving after he had been disqualified by Barnet justices.

Keech told the court that he had applied for removal of the two-year ban twice, and on the second occasion was given permission to drive Army vehicles. He now wanted to drive civilian vehicles so that he could help his brother during week-end leave.

This is a case in which the defendant had, apparently, already had his disqualification removed in part.

In *R.* v. *Cottrell* [1955] 3 All E.R. 817, the applicant was sentenced at Swansea Assizes in 1954 to a fine and disqualified for driving any class of motor vehicle for a period of five years, for dangerous driving. In imposing the disqualification the court intimated that if after one year had elapsed the court were satisfied with the applicant's behaviour it would not be out of keeping with the sentence that his disqualification should be varied to permit the applicant to ride a motor cycle. After a year had elapsed the applicant, who had been of good behaviour since the time of his sentence, applied to the court to have the disqualification imposed on him varied so as to permit him to drive a motor cycle. McNair, J., held that the Road Traffic Act, 1930, s. 7 (3), did not empower the court to vary the disqualification by removing it in part, although the disqualification could be removed altogether; and accordingly the application must be refused.

That decision was upheld in the Court of Criminal Appeal in *R.* v. *Cottrell* (*No.* 2) [1956] 1 All E.R. 751, on March 12 this year, when Cottrell applied for an extension of time in which to appeal and for leave to appeal against the sentence imposed in 1954. The Court gave him leave to appeal against his sentence and treated the application as the hearing of the appeal. The Court then altered the sentence which was originally passed, leaving the disqualification as it stood for five years, but limiting it under the proviso to s. 6 (1) to driving motor lorries, which would enable the applicant to drive a motor cycle.

It is now quite clear that a disqualification cannot be removed in part. If application is made under s. 7 (3) to remove the disqualification the court must " either remove the disqualification as from such date as may be specified in the order or refuse the application." There is no power to vary the disqualification.

It was decided in *R.* v. *Manchester Justices, ex parte Gaynor* [1956] 1 All E.R. 610, that if disqualification is removed from a future date there is power to entertain a subsequent application for immediate removal. In that case the applicant was disqualified for three years

on April 27, 1954. On May 27, 1955, he applied under s. 7 (3) for the removal of the disqualification and the justices ordered its removal as from April 27, 1956. On August 31, 1955, he applied for the immediate removal of the disqualification on the ground of hardship. The justices refused to allow the application to be made, on the ground that they had no jurisdiction to hear it, since the previous application had been granted, and further applications could only be made if a previous application had been refused. The applicant applied for an order of *mandamus* requiring the justices to consider the application. It was held that the justices had jurisdiction to hear the second application, and an order of *mandamus* was granted.

REVIEWS

The Food and Drugs Act, 1955. With an Introduction by John A. O'Keefe, LL.B., B.Sc. (Econ.), Barrister-at-Law, Chief Officer Public Control Department, Middlesex County Council, and Annotations to Sections by Robert Schless, Barrister-at-Law. Reprinted from Butterworths Annotated Legislation Service. London: Butterworth & Co. (Publishers) Ltd. Price 30s. net, postage 1s. 2d. extra.

Consolidation Acts are of great advantage, but at first they seem unfamiliar and a little troublesome to those who have been accustomed to the earlier Acts and who knew their way about them. Thus we appreciate the Magistrates' Courts Act more and more as we become used to it and forget to some extent the provisions and arrangement of the Summary Jurisdiction Acts.

The Food and Drugs Act, 1955, consolidates the Food and Drugs Act, 1938, the Food and Drugs (Milk Dairies and Artificial Cream) Act, 1950, the Food and Drugs (Amendment) Act, 1954, and relevant parts of the Slaughter-houses Act, 1954, and of the Slaughter of Animals (Amendment) Act, 1954. This consolidation will prove most convenient, but at first it will be a little difficult to realize exactly what changes have been made by the Act of 1954, and to identify new sections with those they have replaced. In these circumstances a reliable guide to the new Act is invaluable, and here it is.

The introduction by Mr. O'Keefe consists of some 23 pages in which the Act is examined in some detail under a number of headings, important changes in the law being noted. This should be read carefully, and it gives a general picture of the Act as a preparation for the remainder of the book, which contains the text of the Act fully annotated section by section. Mr Schless has performed his task admirably. The notes are copious and include references to numerous cases, with abundant cross-references. It is easy to find what one wants in such a book. There is a table of repeals and replacements, and the important Food Hygiene Regulations, 1955, are printed in an Appendix.

Both editors are well qualified for their work, and Mr. O'Keefe possesses not only professional and academic qualifications, but also the advantage of practical experience in the public control department of an important local authority. Practitioners, clerks to justices, and officials concerned with food and drugs administration, will find that it meets their needs as a work of ready reference that can be trusted.

The Food and Drugs Handbook. Being a guide to the Food and Drugs Act, 1955. By Basil James, M.A.(Cantab.), Barrister-at-Law. London: Hadden Best and Co., Ltd., 16 Strutten Ground, Victoria Street, S.W.1. Price 25s. net, postage 1s. 3d. extra.

The publication of a book on the new Food and Drugs Act will be welcomed by practitioners and officials. Although this is a consolidation Act it includes a number of amendments of the law, and the learned author draws attention to these in an excellent introduction. Among alterations of importance are the cutting down of certain defences to proceedings, the disqualification of a caterer for using his premises as a catering establishment, and an increase in the punishment in the case of a first offence. There are also certain changes relating to the institution of proceedings.

There is a comparative table showing the sections of earlier statutes or the statutory instruments from which sections in the new Act are derived . This kind of comparison has proved of great value to users of books dealing with consolidation Acts, since it is often helpful to refer to the earlier law.

The sections of the Act are fully annotated, but Mr. James has exercised a wise discretion in the citation of cases, so that the book is quite small and handy. As he observes, a century of legislation has produced a wealth of case law, and many of the cases are still of authority. Summaries of facts are given when practicable. All important cases since 1938 are included, with a selection of the more important cases reported before that date. The Food Hygiene Regulations, 1955, are included, and there is a table of the various other regulations now in force.

Food and Drugs Legislation has become of increasing importance in recent times. The author quotes Lord Woolton as saying that the Act of 1938 needed to be strengthened; there were two major changes in society, the increased habit of "eating out" in canteens and restaurants, and the remarkable development in food technology. The then law about adulteration, he said, came from a cruder age when sand was mixed with brown sugar and alum with flour.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

SIR,

The article headed "Food Hygiene Regulations" in your issue of April 14 (120 J.P.N. 224) reminds me of a visit to me, some time ago, of a relative intimately connected with the catering trade in the United Kingdom.

As we travelled in Southern Spain, a simple request from me would invariably be met by an invitation to see the kitchen of the various establishments, some of them quite humble, where we had meals.

This courtesy astonished my cousin, as did the attractive cleanliness of staff, utensils and fittings we found everywhere.

Lest it be thought that I am touting for tourists I will add that the plumbing arrangements were—and are—too often primitive.

Yours faithfully,
J. R. NORTON-AMOR.

4 Mount Road,
Gibraltar.

ADDITIONS TO COMMISSIONS

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Anthony Hugh Barber, Doddo House, Berwick-on-Tweed.
Gilbert Wilkinson Barker, 59 Delaval Gardens, Newsham, Blyth.
George Heron Branwell, Thornhill, The Oval, Benton, Newcastle-on-Tyne 12.
Lt.-Col. John Henry Francis Collingwood, M.B.E., Cornhill House, Cornhill-on-Tweed.
Captain Addison Joe Baker-Cresswell, D.S.O. (R.N.), Newton House, Alnwick.
Miss Katherine Ellison Darling, Linhope House, South Street, Alnwick.
Mrs. Kathleen Hogg Davidson, Beal House, Beal, Berwick-on-Tweed.
George Edmund Dent, 14 East Crossfield, Haltwhistle.
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William Golder Heatley, 19 Cypress Gardens, Blyth.
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James Lowther, 23 Farne View, Shilbottle, Alnwick.
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Commander Edmund Henry Chapman, R.N. (retd.), The Croft, Burpham, Arundel.
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Charles Percy Mason, 163 Brighton Road, Lancing.
Mrs. Phyllis Mitchell, Luckins, East Street, Littlehampton.
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Miss Olga Ostergard, Downe Cottage, Glaisdale.
Lady Margaret Beresford-Peirse, Bedale.
Mrs. Muriel Beresford-Peirse, The Rectory, Richmond, Yorks.
Mrs. Winifred Wood, 25 Inga Garth, Pickering.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

The Magistrates' Courts (Appeals from Binding Over Orders) Bill, has now had a formal Third Reading in the Lords, and has been returned, with amendments, to the Commons.

PROSTITUTION

In the Commons, Mr. R. R. Stokes (Ipswich) asked the Secretary of State for the Home Department what evidence was received by or what bodies were recalled since August 30, 1955, to give evidence before the Departmental Committee on Homosexuality and Prostitution on brothels and profit-making out of the exploitation of prostitution.

The Secretary of State for the Home Department, Major Lloyd George, replied that he understood that no bodies or individuals had submitted to the Committee since August 30 evidence directed exclusively to those matters. Some witnesses who had given evidence relating to prostitution in general had naturally touched on those matters in the course of their evidence, but as the Committee was meeting in private, it would not be appropriate to discuss the nature of the evidence given by particular witnesses.

In reply to a supplementary question, Major Lloyd-George said he could not give the date when the Report would be issued, but the Secretary of the Committee had made it clear that no more written evidence would be received after August 31. Certain oral evidence, particularly where it had not been given in the first instance, would be called for again.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, May 1, 1956

JUSTICES OF THE PEACE ACT, 1361 (AMENDMENT) BILL now MAGISTRATES' COURTS (APPEALS FROM BINDING OVER ORDERS) BILL, read 3a.

NOTICES

The next court of quarter sessions for the borough of Southend-on-Sea will be held on Wednesday, May 23, 1956.

The next court of quarter sessions for the city of Winchester will be held on Thursday, May 24, 1956, at the Guildhall, Winchester, commencing at 10.45 *a.m.*

BOOKS AND PAPERS RECEIVED

Juvenile Offenders Before the Courts. By Max Greenhut, Reader in Criminology in the University of Oxford. Oxford: Clarendon Press. London: Oxford University Press, Amen House, Warwick Square, E.C.4. Price 21*s.*

The Suffolk Magistrate: No. 6. A Bulletin issued under the auspices of the Magistrates Courts Committees of the Counties of East and West Suffolk. Edited by J. N. Martin.

A new study of Police History. By C. Reith. Oliver and Boyd, Ltd., Tweedale Court, Edinburgh 1. Price 18*s.* net.

FISHY TRANSACTIONS

Two recent cases, reported briefly in *The Times*, are remarkably alike for the matter and the manner of their argument. Both were concerned, in one way or another, with the important subject of food, with particular reference to fish. *Wilts. Quality Products* (*London*), *Ltd.* v. *Customs and Excise* raised the unpromising issue whether pieces of fish preserved in jars of brine were "fish products, frozen or preserved" within the meaning of sch. 3 to the Open General Import Licence of January 21, 1954, made under the Import of Goods (Control) Order, 1954; if they fitted that description, they could be lawfully imported under the provisions of the said licence. In *Newberry* v. *Cohen's* (*Smoked Salmon*), *Ltd.* (the name of the defendant company is enough to make anybody's mouth water) the question was whether s. 47 of the Shops Act, 1950, had been contravened by the sale of kippers on a Sunday. The prosecution had been commenced, not by the Lord's Day Observance Society, but by a duly authorized officer of the London County Council. The issue was whether kippers come within the exemption in sch. 5 to the Act, which permits the serving, on Sunday, of "meals or refreshments"—but "not including the sale of fried fish and chips at a fried fish and chip shop." (The reasons which may have seemed good to the Legislature in thus persecuting purveyors of the staple diet of holiday crowds have, regrettably, not been revealed.)

The *Wilts.* case (which was by way of summons in the Chancery Division) produced some ingenious argument on the part of Counsel, and some pleasant *facetiae* on the part of Harman, J. It was contended on behalf of the company that, as soon as one does something more to food than merely preserve it, it becomes a "product." The discussion ranged over an area bordered, on the one side, by potato chips, and on the other by sausages—the latter being included in the Licence under the head of "meat products." His Lordship testily observed that haggis, too, was so included—a classification which did not appeal to him at all. "Looking at the bewildering variety of articles specified in the licence," said the learned Judge, "he was reminded of the Shakespearean scene where Sir John Falstaff called Mistress Quickly an 'otter,' on the alleged ground that she was 'neither fish nor flesh'." "Mistress Quickly" commented his Lordship "made a spirited reply, which I need not repeat." Having ourselves taken the trouble to verify the reference (*The First Part of King Henry IV*, Act III, Scene 3), we respectfully agree. Even with our own inveterate addiction to quotation we must draw the line somewhere.

"Looking inside the jar," pursued his Lordship (with the caution we have learned to associate with judicial pronouncements), "one recognized the pieces as bearing a strong resemblance to salmon"; and having undergone some process in a factory they would appear to be a "fish product." Counsel for the Customs and Excise had argued that this phrase must imply that the original identity was no longer recognizable; but his Lordship refused to take so narrow a view. Notwithstanding that it was still recognizable as fish, the contents of the jar fell within the exemption of the General Import Licence.

In *Cohen's* case the scaly question was whether kippers in an uncooked state came within the definition of "meals or refreshments." The Lord Chief Justice, presiding in the Divisional Court, refused to be drawn into any finding, of fact or law, on the ichthyophagous propensities of the local inhabitants; he saw no greater reason to postulate their insistence on having their kippers cooked than their willingness to devour them raw. Assuming that the Court might take judicial notice of the nature and quality of a kipper, his Lordship thought that the proposition of eating it uncooked was distinguishable from doing the same with a leg of mutton. Cassels, J., pointed out that there is a school of dieticians which advocates the eating of raw food; "there is" he remarked "a common that some gentlemen are eating their way across"; but this was neatly capped by Counsel's reminder that the schedule excepts raw vegetables. Donovan, J., was tempted to inquire whether the exception would cover a raw onion, on which the learned Lord Chief Justice commented that "it might be prohibited for other reasons."

Following up this polite *badinage*, Donovan, J., returned to the attack. Why, he asked, the assumption that the phrase "meals and refreshments" must be taken to relate exclusively to human beings? His own cat would eat raw kipper with

avidity and, if asked for its views (so his Lordship implied), would concur in the opinion that raw kipper was a real meal. Counsel for the prosecution hastily stepped in with the argument that " reasonable people, or the bulk of them, do not eat raw kipper "; but was met with the retort that " when one gets down to an article of food, it is impossible to conceive of the reasonable person." For a time the argument seemed about to be bogged down like the controversy on the eating of eggs, between the big-endians and the little-endians, in *Gulliver's Travels*, until the Lord Chief Justice, delivering judgment, pointed out the incongruity between the obvious application of the phrase " meals and refreshments " to smoked eel, smoked trout, smoked salmon, and pickled herring (in its various forms), and the exclusion of what is in effect smoked herring—*i.e.*, kipper—from the favoured class. In his opinion it could be, not merely a meal, but a very good meal—and as such it will go down, preserved in the Law Reports, to posterity.

For our part we are glad to have judicial authority in favour of this homely but nutritious article of diet. The Lord Chief Justice did not follow the example of his brother in the Chancery Division, by quoting Shakespearean precedent; but he might have found an analogy in *Antony and Cleopatra:*

> " 'Twas merry when
> Your wager'd on your angling; when your diver
> Did hang a salt-fish on his hook, which he
> With fervency drew up."

There is no clear historical evidence to support the theory that Charmian was referring specifically to a kipper; but the ubiquitous herring is found in so many palatable forms that it is almost certain to have been employed on that occasion. It requires, indeed, little distortion of the context to apply to it, *mutatis mutandis*, the most famous lines in the play:

> " Age cannot wither her, nor custom stale
> Her infinite variety. Other women cloy
> The appetites they feed; but she makes hungry
> Where most she satisfies."

Thus Antony's friend, Enobarbus, on the attractions of Cleopatra. That seductive creature would have been intrigued, if not altogether flattered, by the metaphor, which was at any rate less offensive than some applied to her by the respectable Roman matrons. Imagery borrowed from the banqueting table is not inappropriate to describe so succulent a morsel of femininity, even if it results in associating her, in the mind, inseparably with thoughts of food. Perhaps that is what Shakespeare intended, for the play abounds in junketings and references to eating and drinking. But the analogy, like most analogies, cannot be carried too far. Antony's terms of endearment were many and various; he even went so far as to call her, on one occasion, " my serpent of old Nile." But a fish—herring or otherwise—is a cold-blooded creature, and whatever characteristics history may have imputed to Cleopatra, cold-bloodedness is certainly not one of them. A.L.P.

PERSONALIA

APPOINTMENTS

Judge Rowe Harding is to be transferred to Circuit 30 (Glamorgan) in succession to the late Judge Gerwyn Thomas. He will be replaced on Circuit 28 (Shropshire and part of Wales) by Mr. David Eifion Evans, Q.C., as a county court Judge.

Mr. W. A. Clark is to become clerk to Moretonhampstead, Devon, justices, to succeed Mr. E. R. White, who has been appointed clerk to Oxford city justices (*see* our issue of March 31, last).

Mr. Ernest Cooke Lee, deputy town clerk of Blackpool, has been appointed town clerk of Blackpool. He has succeeded the late Mr. Trevor T. Jones. Mr. Lee became deputy town clerk in 1937 and has been connected with the corporation since 1931. He is 48.

Mr. John Henwood-Jones, town clerk of Aberystwyth since 1952, has been appointed clerk and solicitor to Wednesfield, Staffs., urban district council. He succeeds the late Mr. W. G. Morgan (*see* our issue of April 7, last). Mr. Henwood-Jones, who will take up his duties on July 1, was an assistant solicitor with Lincolnshire county council before the war. On returning from Army service he became deputy town clerk of Leatherhead, Surrey, urban district council. In 1949 he was appointed deputy town clerk of Colwyn Bay where he remained until taking up his Aberystwyth post. Mr. Jones resigned from the town clerkship of Aberystwyth recently (*see* our issue of April 21, last).

Mr. H. Bedford, L.A.M.T.P.I., assistant solicitor to Margate, Kent, corporation has been promoted to the position of deputy town clerk to succeed Mr. A. I. Clough, who has been appointed town clerk of Hertford. Mr. Bedford, who takes up his duties on May 7, was formerly assistant solicitor to Barnsley, Yorks., corporation.

Mr. Alec Ashley Chapman, A.M.I.C.E., M.I.W.E., deputy engineer and manager of the city of Leicester water department and deputy engineer of the River Dove water board, has been appointed engineer and manager to the newly-formed Medway water board in Kent. Mr. Chapman, who was previously in the service of the South Staffordshire waterworks company for a number of years, will take up his appointment on May 1, 1956.

Mr. Peter Coppenhall, A.C.C.S., clerk and accountant to the West Cheshire water board, has been appointed clerk and chief financial officer to the newly-formed Medway water board in Kent. Mr. Coppenhall will take up his appointment with the Medway water board on June 1, 1956.

Mr. J. Reginald Edwards has been appointed coroner for North Cardiganshire.

Mr. H. B. M. Falck has been appointed county coroner for the Eastern district of East Suffolk, succeeding Mrs. Symes, who has resigned. He was previously deputy.

Mr. Stanley John Balcombe has been appointed a whole-time probation officer to serve the Warwickshire combined probation area.

Mr. F. J. A. Briggs, at present an officer serving under the Durham combined probation committee, has been appointed a probation officer to serve the North Riding. His office will be at Redcar. From 1945 to 1952 Mr. Briggs was in the probation service in British Guiana and Singapore.

Mr. Leonard William Pett, formerly of the Hampshire combined probation area, has been appointed a probation officer to serve Southend-on-Sea, succeeding Mr. Finn, *see* our issue of April 14, last. Mr. Pett has had some 11 years experience in social work during the past six of which he has been engaged in probation work.

Chief Inspector G. J. Burton of Kent police headquarters, Maidstone, is to be superintendent and chief clerk as from May 1, next.

RESIGNATION

Mr. C. T. Dawson, who has been the Ipswich borough coroner since 1932, is to resign.

OBITUARY

Mr. D. Pugh Jones, clerk to Dolgelley, Merioneth, rural district council, has died at the age of 54. Mr. Pugh Jones had been clerk for 28 years. For his work in connexion with evacuation in 1942 he received the M.B.E.

Mr. Robert Henry Hopkins, a superintendent and chief superintendent in the Gloucestershire constabulary for more than 30 years and deputy chief constable of the county for four years before his retirement in 1935, has died. He joined the force at Cheltenham in 1891, and after regular promotions in the early years of this century, was appointed chief superintendent in 1925. In 1931 he was promoted deputy chief constable, transferring from Cheltenham to Gloucester, where he remained until his retirement.

Sir Philip Petrides, a former Chief Justice of the Gold Coast, has died at the age of 74.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Legitimated child—Adoption by parents.*

H, a British subject domiciled in England, whilst serving in H.M. Forces in Germany carried on an association with a German girl, W, who gave birth to a child as a result of such association, in May, 1947. H married W in December, 1947, and the marriage took place at a register office in England. H, W and the child are all now living in England and both H and W intend permanently to reside in England which they regard as their permanent home. As neither H nor W was married to a third person when the child was born it would appear that the child has been legitimated by virtue of s. 1 of the Legitimacy Act, 1926, as from the date of the marriage. H and W intend to make an application to a juvenile court for an adoption order as they have been advised that this is the cheapest and most convenient way of obtaining a birth certificate which shows the child's new surname as that of its parents. The Adoption Act, 1950, appears to contain no restrictions which would prevent the court making an adoption order. I shall be glad to have your views on the matter.

S. CESTRIAN.

Answer.

It may be said that such an adoption is authorized by s. 1 (2) and (3) of the Adoption Act, 1950, but seeing that this child has become the legitimate child of the applicants, there would be no change of status and the proceedings seem artificial. However, the order would be of advantage to the infant from the point of view of obtaining a "birth certificate," and we would not go so far as to say that the justices could not make an order. Inasmuch as the question of law presents a difficulty, it might be considered well to refer the parties to the High Court under r. 14 of the Adoption of Children (Summary Jurisdiction) Rules, 1949.

2.—Children and Young Persons—*Neglect—Mother of illigitimate child deserts it—No likelihood of suffering—Children and Young Persons Act*, 1933, *s.* 1.

A is a single woman who has an illegitimate child aged one year. She obtains a situation as a domestic worker at a home for old people and is allowed to have her child with her whilst she is in this employment. She knows that if she leaves this employment, she must take the child with her. During one afternoon, the child was in a pram in the garden of the home when the mother went out presumably to post a letter. The matron's attention was drawn to the child in the pram about one and a half hours afterwards as the mother had not returned. She did not return and has, in fact, not yet returned.

The child did not suffer any injury to health and the mother no doubt believed that the matron of the home would take the necessary steps to see that the child did not suffer from injury to health. The matron did, in fact, care for the child for a few days after which the child was received into the care of the local authority under s. 1 of the Children Act.

In the circumstances outlined above, it is considered that a charge of abandonment against the mother (s. 1, Children and Young Persons Act, 1933) would not result in a conviction but it is considered that a charge of neglect against the mother (s. 1, Children and Young Persons Act, 1933) could be sustained because the mother has failed and did fail herself to provide adequate food for the child (s. 1 (2) (*a*), Children and Young Persons Act, 1933) although actual suffering or the likelihood of actual suffering by the child was obviated by the action of another person (s. 1 (3) (*a*), Children and Young Persons Act, 1933).

The circumstances in which the child was left by the mother were such that there was no actual suffering or likelihood of actual suffering by the child, but in view of s. 1 (3) (*a*), Children and Young Persons Act, 1933, your opinion as to whether the mother has committed an offence of neglecting the child would be appreciated, subject, of course, to any defence which she may be able to put forward as to her reasons for not returning to resume care of the child.

S. PROSPICE.

Answer.

But for s. 1 (2) *supra*, we should have said there was no offence under s. 1, because the mother knew the child would be looked after first by the matron and then by the local authority, so that there was no likelihood of suffering or injury to health. However, the effect of s. 1 (2) is that a parent is deemed to come within the section if she neglects to provide food and clothing, as this mother has by leaving all that to other people. There seems to be a case for her to answer.

Perhaps a more appropriate charge would be under s. 51 of the National Assistance Act, 1948, for persistent neglect to maintain the child.

3.—Contract—*Building work—Time limit—Fluctuations after fixed time for completion.*

My council use the standard form of contract, revised 1952, supplied by the Royal Institute of British Architects in respect of housing works. Clause 25A of this form of contract provides *inter alia* that the contract sum is subject to variations in the event of a rise or fall in rates of wages and the basic prices of materials current at the date of tender. Your opinion is sought on the following point. If a contractor fails to complete the works by the date fixed for completion at the time the contract was signed, or at the end of any extended period for completion allowed under cl. 18 of the conditions, is an employing authority liable to pay the increased costs of labour or materials beyond the date for completion so fixed ? In other words, does cl. 25A of the conditions of contract cease to have effect immediately the time fixed for completion has passed. A.R.D.

Answer.

In our opinion cl. 25A operates so long as the contractor is working upon the contract. If he fails to complete at the proper time, he becomes liable under cl. 17 to pay liquidated damages, but time is not declared, in the R.I.B.A. form, to be of the essence of the contract. If the result of delay beyond the date stated in the appendix to that form, which is related to cll. 16 and 17, is to put extra cost on the employer by reason of cl. 25A, this extra cost can be added to the damages recoverable.

4.—Land—*Compulsory acquisition—Notice of entry.*

A private Act provides that at any time after notice to treat has been served for any land which the acquiring authority are, by that Act, authorized to purchase compulsorily, the acquiring authority may after giving to the owner and occupier of the land not less than six months' notice enter on and take possession of the land or such part thereof as is specified in the notice, without previous consent or compliance with ss. 84–90 of the Lands Clauses Consolidation Act, 1845. The Act incorporates the Lands Clauses Act, except s. 92, and ss 127–132.

Notices to treat have been served on all owners, lessees and occupiers, other than those holding for a year or less. The question has now arisen whether the occupiers for a year or less can be served with six months' notice of entry under the private Act, or whether in view of the fact that notice to treat has been served "for the land," it is necessary to deal with the short term tenants under s. 121. The advantage of dealing with the short term tenants under the private Act is that it will not be necessary to tender the compensation, which of course may involve having it assessed by the Lands Tribunal, as would be necessary if action were taken under s. 121.

PORMIN.

Answer.

Ordinarily ss. 84–90 of the Lands Clauses Act, 1845, must be used if possession is required of an interest within s. 121, without paying or tendering compensation as required by s. 121. The deposit of the compensation is made under ss. 84–90 and the compensation under s. 121 is assessed later by the appropriate tribunal under s. 121.

The effect of the clause in the private Act is to enable possession to be taken without making a deposit under ss. 84–90, but the compensation must later be assessed by the Lands Tribunal.

5.—Land—*Sewer—Compensation—Time limit.*

The council lays a sewer, including manholes, after due notice under s. 15 of the Public Health Act, 1936. The sewer and manholes are completed across Y's field by March 31, 1954. On September 12, 1955, Y claims £32 in compensation, falling to be dealt with by arbitration, which claim may under s. 278 (2) be determined, on the application of either party, by the justices.

(1) Is Y statute-barred under s. 21 (1) of the Limitation Act, 1939, or otherwise, because he made no claim for more than 12 months after the completion of the sewer and manholes ?

Note. As the cause of action arose before June 4, 1954, s 7 of the Law Reform (Limitation of Actions) Act, 1954, appears to keep s. 21 (1) alive for this purpose.

(2) If the manholes, etc., had been completed after June 4, 1954, would s. 11 of the Summary Jurisdiction Act, 1848, apply to a complaint made to the justices, if the compensation claimed is under £50 ?

(3) If so, would the six months run (*a*) from the completion of the manholes, or (*b*) from the submission of the claim, or (*c*) from the refusal to pay an acceptable sum in settlement of the claim ? ATTLE.

Answer.

(1) Yes, in our opinion: *see* ss. 27 and 31 (definition of "action") of the Act of 1939. We agree with your note about the applicability of s. 21 of that Act.

(2) Yes (or rather s. 104 of the Magistrates' Courts Act, 1952): *see* s. 300 (1) of the Act of 1936, requiring the application to the magistrates to be by complaint. But *see* the next answer.

(3) We think time runs from the submission of the claim, just as s. 293 (2) of the Act of 1936 fixes the date of service of a demand as the point of time at which the matter of complaint arises, within the meaning of s. 104 (1) of the Act of 1952, where the council are recovering money by summary proceedings.

6.—Landlord and Tenant Act, 1954, part II—*Business carried on in council houses—Piece-worker for firm.*

The housing committee of my council has received an application from the tenant of a corporation house for permission to operate an electric sewing machine in the house in connexion with the manufacture of small toilet articles by her as an out-worker for a local firm. It has been the practice of my council in the past to grant such applications, subject to no nuisance being caused to occupiers of adjoining houses, but I am rather concerned as to the effect of the provisions of s. 23 in part II of the Landlord and Tenant Act, 1954, on the security of tenure of tenants of corporation houses who are carrying on businesses at home with the consent of the council. While the tenant of a council owned house has no security of tenure such as is enjoyed by tenants of privately owned houses, and the Act specifically excludes business premises which are protected under the Rent Restrictions Acts, no reference is made in the Act to the position of council houses used as business premises.

I should be glad to have your opinion as to whether s. 23 of the Landlord and Tenant Act, 1954, will apply in the circumstances outlined in the first paragraph above.

A. GLENCOIN.

Answer.

Where a tenant carries on a business, as defined in s. 23 (2), we agree that s. 23 (1) brings the premises within part II of the Act, notwithstanding that they are the tenant's residence, subject to the excluding provisions in s. 23 (4) and some later sections. The matter needs to be watched by local authorities as well as by other landlords. But will this woman be "carrying on a business" and "occupying for the purposes of" that business? We doubt whether a person, who is employed as an out-worker by a firm having its place of business elsewhere, is within the section, despite the word "employment" in subs. (2). Something might turn on the relationship between the woman and the firm, *e.g.*, whether she is a mere piece-worker, handling material issued to her by the firm, or a contractor providing her own raw material and selling finished articles to the firm. The latter person would be "carrying on" a business in ordinary language; the former (we think) not.

7.—Magistrates—*Jurisdiction and powers—Material witness in criminal case resident in Scotland—Compelling attendance—Subpoena.*

We should be glad of your assistance on a point arising under s. 77 of the Magistrates' Court Act, 1952. We are instructed to defend on a charge of careless driving which will be heard in England and a material witness is resident in Scotland. It seems clear from s. 77 that the magistrates could, on application, if the witness were then resident in England, issue a summons which could be enforced even if he later moved to Scotland, but that if he is in Scotland at the time of the application, no summons could issue. We wonder if you know of any way in which this obstacle could be overcome as it seems to us that it might, though not necessarily in our own case, easily cause a serious injustice and is also anomalous in that a witness could be summoned from Lands End to Carlisle but not from Gretna to Carlisle.

SARLIL.

Answer.

We know of no process which justices can issue in the case of a witness who is resident in Scotland, but it would appear, by virtue of ss. 3 and 4 of the Writ of Subpoena Act, 1805 (45 Geo. 3, c. 92), that application can be made to the Crown Office for the issue of a subpoena to compel the attendance of the witness.

8.—Private Street Works Act, 1892—*Council contributions—Reduction of apportionments.*

The local council proposes to make up a street under the provisions of this Act. They resolve to make a contribution of £3,000 towards the cost under the provisions of s. 15. Objections by frontagers to the provisional apportionments have been heard by the court under s. 8. The court reduced the total apportionments by £1,500 in respect of work required to drains and sewers which were held to have become vested in the council many years ago under s. 13 of the Public Health Act, 1875. The council now proposes to ignore the provisional apportionments as approved by the court and to prepare new apportionments in accordance with the procedure laid down in s. 6. At the same time they propose to reduce their contribution under s. 15 from £3,000 to £1,500. Your advice is sought as to their power to do this in view of the fact that the earlier provisional apportionments have been approved by the court under the provisions of s. 8.

P.C.P.R.

Answer.

We are of opinion that it is too late to start proceedings *de novo* now that objections have been heard; *see Southampton Corporation* v. *Lord* (1903) 67 J.P. 189. Although there is no clear authority on the point, we consider that the time for the exercise of the discretion to proceed or not ceases when the objections are decided on.

9.—Public Health Act, 1936—*Defective closet—Order on owner or occupier.*

The owner of a house has been served with a notice under s. 45 of the Public Health Act, 1936, requiring him to replace a w.c. pan. The owner has appealed under s. 290 on the grounds that the notice should have been served on the tenant. There is no written tenancy agreement. The rent is 10s. per week.

Unless the owner can prove that the tenant was negligent to break the w.c. (which seems an impossibility) is there any other way that the owner can avoid liability? Could the court order that the owner and tenant should pay half the cost each? Can you refer us to any authorities?

BURYST.

Answer.

The suggestion of splitting the expense is directly supported by s. 290 (5). We do not think any other authority is needed, but the court might (we think) pay regard not only to the matters (*a*) and (*b*) expressly mentioned in the subsection, but also to the analogy of s. 93 (*a*): from *Parker* v. *Inge* (1886) 51 J.P. 20, it seems that this defect is structural. It may of course be contended on the owner's behalf that s. 45 deliberately gave the magistrates a freer hand than s. 93. In relation to (*a*) in s. 290 (5), and the absence of any formal agreement, the owner's advisers should also bear in mind s. 2 of the Housing Act, 1936, which makes an agreement for the parties.